

APPENDIX
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Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-402

UNITED STATES OF AMERICA

Appellant

v.

**GENERAL DYNAMICS CORPORATION, THE UNITED
ELECTRIC COAL COMPANIES, AND FREEMAN
COAL MINING CORPORATION**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**JURISDICTIONAL STATEMENT FILED SEPTEMBER 8, 1972
PROBABLE JURISDICTION NOTED DECEMBER 11, 1972**

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* Not reprinted in Joint Appendix. Citation is to appendix of Jurisdictional Statement.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC
COAL COMPANIES; and FREEMAN COAL MINING COR-
PORATION, DEFENDANTS

TRANSCRIPT OF PROCEEDINGS

had and testimony taken at the trial of the above-entitled cause before the HON. EDWIN A. ROBSON, one of the Judges of said Court in his courtroom in the United States Courthouse, Chicago, Illinois, commencing on Wednesday, March 30, 1970, at 11:00 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS and
MR. RICHARD J. BRAUN

(Department of Justice, 26th Floor, 219 South Dearborn Street, Chicago, Illinois 60604)

appeared for plaintiff;

[2] PRESENT (Continued):

MESSRS. KIRKLAND, ELLIS, HODSON, CHAF-
FETZ & MASTERS

(29th Floor, Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601) by

MR. HAMMOND, E. CHAFFETZ,
MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III
appeared for defendants.

[37] THE COURT: I will take that up at the conclusion. Are any of them pertaining to this witness?

MR. CUSACK: No, your Honor.

MR. HEDLUND: I do not believe so.

THE COURT: All right. If they are not pertaining to this witness, that will be taken up separately.

THE CLERK: Will you raise your right hand, please.

(Witness duly sworn.)

JACK A. SIMON,

called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR. CUSACK: Your Honor, as we have mentioned to the Court, the Government's direct examination of Mr. Simon is contained in his deposition of July 31, 1969, and this morning the defendants have agreed to also include as one of the exhibits of Mr. Simon, which will be designated as GX-210, his statement before the Illinois Commerce Commission on February 24, 1970. We will provide the Court with copies of that. We have had some copying problems.

[38] THE COURT: All right.

MR. CUSACK: Thank you, your Honor.

THE COURT: There is no objection to that statement, Mr. Hedlund?

MR. HEDLUND: No objection.

THE COURT: All right. The record may so show. It will be incorporated in and made a part of the record, Government's Exhibit 210.

MR. HEDLUND: Has the Government on that basis concluded its direct examination of Mr. Simon?

MR. CUSACK: Yes, your Honor, we have.

THE COURT: You may cross examine.

[39]

CROSS EXAMINATION

BY MR. HEDLUND:

Q For the benefit of the Court, would you please state your name and occupation.

A Jack A. Simon. I'm principal geologist with the Illinois State Geological Survey.

Q Would you please briefly describe the responsibilities of the Illinois Geological Survey with respect to coal and your own responsibilities therein.

A Well, the Illinois Geological Survey, through its nearly 65 years of existence, has been concerned with assembling all geologic information that they could concerning coal, its occurrence, reserves, associated rocks, coal quality and variety of other things pertinent to the geology of coal.

I started with the Illinois Geological Survey as a part-time student in 1937 to '42 and interrupted by the war. I came back to the Coal Section in 1945 and worked full-time until 1953, I became head of the Coal Section, in which capacity I served until 1968. Since that time I have been principal geologist.

Q Would you briefly describe in general terms the type of information which the Illinois Geological Survey obtains with respect to coal and generally the [40] type of studies with respect to coal that it makes and publishes.

A One of the most basic files in the Geological Survey is a drill records file, which contains about 200,000 drill records of all types, including coal, oil and gas, water, other mineral test holes that have been assembled through the years. We have also sampled and analyzed something of the order of a thousand coal mines through this period and have a large number of additional, miscellaneous analyses.

In terms of other basic information, we have assembled other kinds of records, my notes, notes on the mining conditions of people that have visited the mines, or information that has been provided. In terms of the character of the work that is done in the coal program, the most basic program has been one of what, we term coal reserve estimates, in which from time to time and for

varying areas we estimate the quantity of coal that is present in any given area. We do a great deal of work on the associated strata to help in the correlation of the coal seams and to understand the character of the rocks associated with the coal, both as an aid in correlation and also as an aid in evaluating the mining conditions.

[41] We have a wide variety, then, of fundamental studies on coal that in some measure are the geologic properties that may relate to the use to which coal might be put, whether it is combustion or any other purpose.

Q Does the Illinois Geological Survey provide federal agencies and bureaus with this information for the State of Illinois?

A In general, historically, it has developed that we have because we have had a substantial program in this area, and so frequently other agencies have come to us to provide such information. But I couldn't say they always have, but certainly in most cases.

MR. HEDLUND: Does the Government have a copy of Simon Deposition Exhibit 1?

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q Mr. Simon, I have handed you a copy of what has been identified as Simon Deposition Exhibit 1. Do you have a copy of that, sir?

A Yes, sir.

[42] Q I wish to ask you a few questions concerning the definitions of terms used in the studies of coal reserves of the Illinois Geological Survey and which have been previously identified as Simon Deposition Exhibit 2 and Jensen Deposition Exhibits 4 through 9, all of which are generally discussed in Simon Deposition Exhibit 1 which is entitled, "An Evaluation of Illinois Coal Reserves Estimates" by J. A. Simon and W. H. Smith.

As I understand it, the term "minable coal reserves" as used in these studies means only that the coal seam is of sufficient thickness and below a maximum depth in the ground to make mining of the coal theoretically feasible, is that correct?

A Yes, I would say that is correct. The theoretical feasibility hasn't been particularly evaluated. It's been a matter of an establishment of a minimum thickness from which we start, and we really haven't evaluated the technical feasibility, but offhand I would say that technically they are feasibly minable, yes.

Q What factors, other than seam thickness and depth, are not included in the way the Illinois Geological Survey uses the phrase "minable coal [43] reserves"?

A Well, I might indicate that there is another factor, too, that we do have. That is the degree of reliability and the fact that the thickness is at one foot increments or less of average thickness, but in general we have not correlated the quality of the coal with the reserves, even though we have a great deal of information on quality. The mining conditions are not evaluated on the statewide basis. The general economic picture, markets, transportation and so on which we generally don't apply to these, the availability of land is of no—we don't generally evaluate that factor in any of our studies. Where some of these others we have on local bases, on land availability we don't at all, and, of course, in terms of Government regulations and controls that may have some bearing in particular areas we don't consider those in our reserve estimates. There may be other—

Q What about specifics relating to state regulations or controls that might affect the technology or the economics of mining? Are these taken into consideration in the phrase "minable reserves"?

[44] A No. In general, state or federal laws and regulations have not been applied to any evaluation of what we report as "minable coal reserves."

Q Then, as I understand it, as used by the Illinois Geological Survey the phrase "minable coal reserves" is synonymous, in effect, with the more simple term "coal reserves".

A As we have used it, that would be correct. As we've used it, that would be correct.

Q Is this phrase usually used in the same sense by other agencies, such as the Bureau of Mines, the United States Geological Survey, or other state agencies publishing similar data?

A I believe that that's correct. However, in use of the term "minable coal reserves", it may very well be defined in different ways in a particular study, and, as a matter of fact, it should always be so defined to make clear what they are referring to as minable coal reserves. But, I think in most cases when minable coal reserves have been referred to, it is principally depth and thickness.

[45] Q Then, as I understand it, there is no intention by the studies of the Illinois Geological Survey with respect to mineable coal reserves to imply that all or even most of the coal reserves can, in fact, and will in the future, actually be mined.

A That's correct. The studies are designed to provide the basis for making such an evaluation but in themselves are not that evaluation.

Q Now, with respect to the phrase "strippable coal reserves," as used by the Illinois Geological Survey, it is my understanding that the word "strippable" is intended to connote only that the coal seam is of a minimum thickness and at a maximum depth to make its removal by strip mining methods at least theoretically feasible.

A Yes, that's correct. It's comparable to what I indicated a while ago relative to mineable coal, that it is not necessary, we are not suggesting that the minimum thickness under the maximum overburden is strippable, but in terms of the definition as it is set forth in the study, that is the minimum thickness and the maximum overburden.

Q What is the minimum thickness criterion used?

A In the strippable coal studies, the minimum [46] thickness that was used was 18 inches, and the reason that 18 inches was used is because there were some small local mines in Illinois that were digging 18 inch coal. This is less than the underground reserve estimates in which on a similar basis and for other reasons 28 inches was assumed as the minimum.

Q What is the maximum depth of overburden that is used to delineate "strippable coal reserves"?

A Well, in this series of reports, we have delineated 50, 100 and 150 feet of overburden, and thickness of

coal at 1 foot increments of thickness, from 18 inches on up, to provide a basis for anybody interested to make an evaluation of what would be truly strippable in those two terms only of depth and thickness, that these reports provide a basic set of data for making a reserve evaluation in terms of true mineability or true strippability.

Now, the 50, 100 and 150 foot overburden lines were determined not because we ever considered that 18 inches of coal would be mineable at 150 feet of overburden, but we could not make any definitions for the users as to where they might want to make the cut-off. So, those data are all in.

Q Then again, as used by the Illinois Geological [47] Survey or others relying on such data, the phrase "strippable coal reserves" is not intended to imply that all or even most of the coal can, in fact, and will in the future be mined by the strip mining method?

A I would say that's correct.

[48] Q In defining the word "strippable", why does the IGS use 150 feet as the maximum depth for "strippable coal"?

A Well, when this study was originally set up about 15 years ago, it appeared that 100 feet perhaps represented the maximum limit that strip mining could go, with mining going underground when they had achieved that. We wanted a higher limit to help define that 100-foot line, because conceivably then if they went to 100 feet in certain suitable situations, they might go a little bit more and greatly increase their reserve.

So to have a higher limit that either would be close to or very far from would help in defining that 100-foot line. We thought of 125 feet, which would have accomplished that. We finally decided on 150 feet, because we thought it would do it just as well, and we had 50, 100 and 150-foot lines.

Actually, about on the order of ten years ago, I think, there were some operations that we began to think perhaps might go over 100 feet appreciably, which made our 150-foot line perhaps look more realistic. But we now have backed off of [49] that. It now appears from our observation, seeing what is being done, rather than having any qualified basis for making the determina-

tion that the 100 foot is the limit, it does appear in the field that operations which are getting up to the order of 100 feet are thinking of going in underground from that point on.

Q In view of the recent legislation pertaining to working conditions in deeper mines, do you believe that there will thus be a rise in this, as I believe you have referred to it, limit of 100 feet after which one would undertake deep mining operations?

A You are referring to the federal legislation?

Q That's correct.

A Relative to underground mining?

[50] MR. CUSACK: Your Honor, the Government objects on the ground it is beyond the scope of the direct examination as set out in the deposition.

THE COURT: The objection may be noted, and the witness may answer, subject to the objection.

MR. CUSACK: Thank you.

BY THE WITNESS:

A It is, I think, too early to fully evaluate what the effect of the new mining law will be. It is my understanding that although it is likely to have some adverse effect on productivity, it is our own not fully qualified observation that laws relative to both strip and underground mines may serve to do that, and we don't have any feeling that one is going to suffer significantly more than the other by present and probable future laws and regulations.

BY MR. HEDLUND:

Q What predictions can you make with respect to prevailing overburden ratios in strip mines in the state of Illinois?

A In terms of predictions, I really would be severely limited, because basically the people who are investing in mining make the determinations of what they economically can go. Offhand I would say that [51] the average for some time hasn't been much over a ratio of overburden thickness to total thickness of much different than 15 to 1. That is, up to that. Although we have had at least one operation that has exceeded 30 to 1 and I couldn't comment other than that it is our present

thinking that perhaps a hundred feet will limit what will be generally done, and this would impose some limits on what stripping ratios would be likely to achieve.

But that is a little speculative, too, so far as the future is concerned.

Q Returning to the Simon Deposition Exhibit 1, as used by the Illinois Geological Survey, what is the meaning of the term "recoverable coal reserves"?

A The word "recoverable" is used a little bit loosely, and is applied in different ways. So far as our application, it has been fairly well established that within a coal field the order of half of the coal that was present originally would be mined. I am speaking now of underground mines.

Q By that you mean that half of the coal that is in place would actually be brought to the surface if and at such time as there was a mine opened?

A Yes. And in general our experience has been [52] that in areas that have been mined, approximately half has been recovered. This figure has been applied much more broadly to coal reserves in general, and I say it should be defined when it is used exactly what is meant. But in general the practice has been in terms of underground coal, and this very widely, that a figure of 50 percent has been assigned to the total coal as "recoverable."

This is without any regard really perhaps to what ought to be minimum thickness cut-offs or other cut-offs, but over-all that has been done, and that basically we followed that general practice.

[53] In general that is the way we have used it to provide a view of it becoming a quite technical point because it really isn't. It is quite loosely used.

THE COURT: Would now be a good time to break for lunch, Mr. Hedlund?

MR. HEDLUND: I think if I could ask one more question, it would be fine, yes.

THE COURT: You may. Please proceed.

BY MR. HEDLUND:

Q Then, Mr. Simon, as I understand it, the term "recoverable reserves" is only intended to provide a dis-

inction between total coal in the ground and what can be "recovered" after mining losses are deducted, is that correct?

A Yes. That is what is meant by "recoverable coal." But it is used in various ways. That was the only point. But basically it is that in every case. It is the matter of the coal that is recovered from what was originally present.

Q And is it in that sense which it is used by the Illinois Geological Survey in its studies?

A Yes.

Q And again there is no intent to imply that [54] all or even most of the "recoverable" coal reserves can in fact and will in the future actually be recovered?

A That is correct.

MR. HEDLUND: That is all, your Honor. This would be a good time now.

THE COURT: Thank you. We will recess until 2:00 o'clock.

(Whereupon, at 12:30 o'clock p.m., the hearing in the above-entitled cause was recessed until 2:00 o'clock p.m., the same day and date.)

[56]

AFTERNOON SESSION

2:00 p.m.

THE CLERK: 67 C 1632, United States of America vs. General Dynamics Corporation, case on trial.

THE COURT: Good afternoon, counsel. Are you ready to proceed?

MR. HEDLUND: I am, your Honor.

THE COURT: Will the witness take the stand.

JACK A. SIMON,

called as a witness by the Government, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: You may proceed, Mr. Hedlund.

MR. HEDLUND: Thank you.

CROSS EXAMINATION

(continued)

BY MR. HEDLUND:

Q Mr. Simon, before the noon recess we were speaking of definitions of terms "recoverable coal reserves," "strip-pable," "mineable." We had concluded with how the phrase "recoverable coal reserves" is used by the Illinois Geological Survey.

I want to ask you now if this is correct with reference to that, that taking the coal reserve estimates for Illinois as published by the Illinois Geological Survey, since these tonnages reflect coal in place, that, therefore, one must reduce these total amounts [57] by approximately 50 percent to determine the amount of raw coal that can be produced assuming, of course, that the coal ultimately is mined.

A This is correct in terms of the way the figure has been used, but, of course, we don't actually make presumptions of what percentage of the total coal in the ground will actually be recovered.

Q Would you please list the factors necessary for assessing coal reserves other than those published by the Illinois Geological Survey, and perhaps it might be easier if first you discussed briefly the factors that are assessed and information given by the Illinois Geological Survey, and then those factors that are not included.

A Generally, in our reserve studies, both strip and underground, the basic assessment is thickness, to a minimum thickness, in terms of the estimates. In general, we have a great deal of information that covers the entire field relative to the depth, but in underground coal, we have put no depth classification or categorization, but in strip coal we do have the 50, 100 and 150 foot overburden categories.

We also report the reserves at approximately 1 foot increments of thickness above the average thick- [58] ness, and normally in the underground reserve studies in four categories of reliability, the reliability being based on the reliability of the data used in the mapping.

[59] In the strip-pable coal reserve studies, in general we have lumped the first two classes of reliability, which

we call 1-A and 1-B in the underground studies, as Class 1 in the strippable studies; and Class 2-A and 2-B as Class 2 in the strip studies.

I believe that that covers the items that we principally consider, which basically are thickness and in some measure depth.

Now, the items that we don't consider on a statewide or regional basis or at least haven't, quality, and we have a great deal of information on quality, but we don't have it sufficiently widespread throughout the state but we can categorize the total reserves in terms of quality.

Q Might I interrupt you at this point to ask you what you mean by "quality"?

A Yes. I am sorry, because I know that very well.

The quality really involves different things for different purposes, but basically the quality as it would be assessed by the analysis, which would include heating value, which is related to the rank, the moisture content, the ash content, [60] the sulphur content, perhaps the chlorine, the swelling characteristics, this type of data that are derived from analyses which relate to various evaluations of quality. In general, we do not tie, or we have not tied this analytical work to the coal reserves on a statewide basis because we don't have the data throughout nearly the area that we have reserves.

Another factor is in the assessment of mineability, and mineability involves many things, the quality of the roof, the quality of the floor, water that might be associated with the seam, whether or not there are displacement faults, channel cutouts, a wide variety of geologic factors that may have a serious influence on the mineability of the seam, assessments that we make on local bases, but we can't apply them on a statewide basis.

Another factor, of course, that was mentioned before, state and federal laws and regulations which may in many situations have a major influence on the economic mineability of coal, and we make no assessment of that, and by and large, of course, this is largely outside of our field so that it is not too likely that we will go very far, at least in that area.

[61] Another aspect that we have not tied to the total reserves picture are the factors of economics.

Q Would you mention some of those?

A Well, the availability of markets, the geography of particular operations relative to particular markets or transportation, what the transportation costs are from different areas and to different markets, the general market for coal, the demand at any given time. These are things that within our organization we have touched peripherally but never really to the degree of any assessment of the over-all reserves.

Q What about the exclusions, or—well, let me rephrase it a different way. Do the estimates of the Illinois Geological Survey include coal that underlies towns, highways, railroads, utility rights of way, and other factors that might ultimately prohibit the mining of the coal in any event?

MR. CUSACK: Objection. Asked and answered in the deposition of Mr. Simon, both on direct and on cross, your Honor.

THE COURT: Has that been asked and answered?

MR. HEDLUND: I don't recall it, your Honor, [62] but if Mr. Cusack has looked and has found it, I will not argue with him about it.

THE COURT: All right. The objection is sustained. Let us not have repetition.

BY THE WITNESS:

A I did neglect to mention that there has been no assessment in terms of availability of land also, whether or not the land is available for mining and whether or not blocks of sufficient size could be assembled. This kind of data also have not been included. As a matter of fact, we haven't made any assessment relative to thickness. Our reserves studies report thickness, but we have made no assessment as to what constitutes mineable thickness or maximum overburden. The data are simply presented to provide a guide for such evaluation.

BY MR. HEDLUND:

Q Mr. Simon, in this action the Government contends that the defendant United Electric Coal Companies will be able to acquire additional economically mineable

strip reserves in the State of Illinois to continue its mining operations beyond the time when its existing strip reserves are exhausted. In support of that contention the Government offers as [63] evidence the reserve studies published by the Illinois Geological Survey and the corresponding total strip reserve estimates for the state.

In your opinion can such data be used to support this contention?

A The data are basic to making such an assessment, but the data as we put it out alone could not be used to support that contention alone. It could be used as a starting basis to develop perhaps a total picture, but it certainly couldn't be used to support that by itself.

[64] Q I would like to ask you finally a couple of questions with respect to what has been identified as Simon Deposition Exhibit 4.

MR. HEDLUND: I wish to pause right here. Is the Government's intention, as previously indicated, to offer this document into evidence, either in your case in chief or in rebuttal?

MR. CUSACK: Yes. It is, your Honor. As your Honor is aware, we have an objection as to materiality of this whole question in regard to coal reserves. We mentioned this in our brief, and I mentioned it in my opening statement. But in the event we are not sustained in that objection, I, of course, will put this into our rebuttal case, your Honor. It is a Simon Deposition Exhibit.

THE COURT: Do you have objection to cross examination on the basis of this, subject to the Court's ruling?

MR. CUSACK: No, your Honor. In fact, it would be proper. It is a Simon Deposition Exhibit, as I say.

THE COURT: All right. You may examine.

BY MR. HEDLUND:

Q Mr. Simon, I hand you what has been marked as Simon Deposition Exhibit 4, which is a bulletin of the Geological Survey, I believe, of the United States [65] authored by Paul Averitt, and entitled "Stripping Coal Resources of the United States."

Would you please turn to page C 4 of that document. In the last sentence of the uncompleted paragraph

at the top of the page, Mr. Averitt says the following:

"In Illinois ratios larger than 30-to-1 have been handled and are being planned in parts of large scale stripping projects, where the coal is 28 to 36 inches thick."

The record in our case to date indicates that only one mine in Illinois, this one being located in Fulton County, exceeded a 30-to-1 average overburden ration in 1967.

Now, apart from that mine, are you aware of any other "large scale stripping project" in Illinois where ratios larger than 30-to-1 are being presently handled or planned?

A I know of none.

Q On the same page in the last complete paragraph on the page, Mr. Averitt states as follows:

"Anticipating the trend toward stripping to greater depths, the Illinois and Indiana [66] Geological Surveys in outlining areas suitable for strip mining are including beds with overburden thickness as much as 150 feet."

As that statement applies to the Illinois Geological Survey, that is the portion of it explaining the anticipation, is that statement correct?

A Not in terms of our thinking. As I explained this morning, we used the 150-foot overburden line to help define the 100-foot line, and at no time that I can recall did we anticipate that we would actually—did we think that the mining companies would go to 150 feet.

As I said also, this is not something that we determined. It is the mines that determine what they can technically and economically do.

[67] But offhand I think this probably is just an interpretation of what we have published and he assumed something that we really didn't imply.

Q The Government has offered into evidence Simon Deposition Exhibit 3—

MR. HEDLUND: Do you have a copy which we can provide the Court while I ask one question about it?

MR. CUSACK: I would be happy to provide the copy with this one (tendering document to the Court).

BY MR. HEDLUND:

Q Mr. Simon, I hand you what has been offered into evidence as Simon Deposition Exhibit 3, which is a ten-column chart entitled, "Summary of Strippable Coal Reserves By Average Thickness".

In interpreting that document, Mr. Simon, should one have in mind the definitions with respect to "mineable coal reserves", "strippable coal reserves", and "recoverable coal reserves" that we discussed this morning?

A Yes. This particular tabulation is an unaudited one, but essentially it is a correct tabulation of seven of the nine-part series of publications, and clearly these are totals that do not [68] reflect at all the very detailed breakdown that are in the reports that provide a basis for knowing the various categories by thickness classification.

These are totals—actually, it has the totals by thickness, but they are summaries. It represents a summary of the detail found in the reports it purports to summarize.

Q The title "Strippable Coal Reserves" would, however, have the same meaning as it does when that term is used in the reports which form the basis for that tabulation, is that correct?

A Yes. And, as I think was indicated in the deposition, my deposition, document 1, it was probably a little unfortunate to use exactly that word, but we didn't fully appreciate all the implications. We were simply trying to convey that these are reserves related to this particular type of mining.

[69] Q One more question on this document, which has a number of totals on it.

Is it a principal objective of the studies by the Illinois Geological Survey to add up the total amounts of tonnages in the various categories of seam thickness or overburden depth or, indeed, to gain a total of all coal?

A I'm not quite sure that I understood your question.

THE COURT: Do you want it read back, or didn't you understand it?

THE WITNESS: I didn't understand it.

MR. HEDLUND: Would you read the question back, please.

THE COURT: Will you read the question, please.

(The question was read by the reporter.)

BY THE WITNESS:

A That clearly isn't the objective. The objective is to provide basic data for the use of anyone interested, landowner, industry, Government planners, to provide the basic data for them to make such assessments.

Now, as an outgrowth of that, and this is a common kind of thing, when we are done with a group or [70] when we are done with the full series, we will go through and pull out totals and list summary totals, but this isn't to suggest that that is the final product. The final product are the individual reports themselves that provide the basic data on depth and thickness.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: Would the Government have Government Exhibit 50 available?

MR. CUSACK: Yes, we have two copies.

MR. HEDLUND: Can I have one to hand to the Court?

MR. CUSACK: Certainly.

MR. HEDLUND: Will the Government stipulate that the information shown on Government Exhibit 50 is based upon the reports of the United States Geological survey which, in turn, with respect to the State of Illinois, are based on reports of the Illinois Geological Survey?

MR. CUSACK: This exhibit is based on Bituminous Coal Acts, 1968. I believe the Illinois figure is based on work done by Mr. Simon's office.

MR. HEDLUND: Will you so stipulate?

MR. CUSACK: If it is a fact. Why don't you ask him?

[71] **MR. HEDLUND:** I am asking him, but I am not confident that he will be able to identify this document.

BY MR. HEDLUND:

Q Mr. Simon, I show you what has been offered into evidence as Government Exhibit 50, which is entitled "Remaining Bituminous and Sub-Bituminous Coal Resources

in the Ground as of January 1, 1967 by the Ten Leading States." I would ask you whether you know if the information set forth on this exhibit with respect to the State of Illinois is based on information and data developed by the Illinois Geological Survey.

A I believe I recognize the figure, and I think I know where it was derived, and that was from a re-estimate of 140 billion tons as of '67 or '68—I don't remember—but it was a published figure, and then Mr. Averitt, I believe, deducted coal that was mined and rendered unmineable by mining since the time that we made that estimate and published this figure here. So, if that is the source, and I think it is, then it is correct that it was developed from our data. It is not a figure that we have ever actually presented, but it's based on what we have presented, I believe.

[72] Q Assuming that the figure for Illinois is based on data supplied by the Illinois Geological Survey, again is it then necessary in trying to assess the meaning of the figures shown here for Illinois to have in mind the definition of terms that we have discussed today and the limits and definitions contained in the survey reports themselves?

A Yes, I would certainly agree.

MR. HEDLUND: I have, your Honor, just a brief series of final questions on cross examination relating to Mr. Simon's testimony in Illinois Commerce Commission Docket 55321, which has been offered into evidence by the Government and to which we did not object. I am afraid we have only one copy of this document in the courtroom.

MR. CUSACK: We are happy to cooperate, your Honor.

THE COURT: Thank you.

MR. CUSACK: That is GX-210, your Honor.

THE COURT: Yes.

MR. HEDLUND: May I question the witness from over here (indicating) so that I can follow along?

THE COURT: You may.

[73] BY MR. HEDLUND:

Q I hand you, Mr. Simon, a copy of your testimony in Illinois Commerce Commission Docket 55321 which

was presented, I believe, on February 24 of this year, is that correct?

A Yes, sir.

Q I direct your attention to the bottom of page 18 and the top of page 19, where the following is stated:

(Reading.) "Generally 100 feet appears to be the current maximum thickness of overburden that limits open cut mining in Illinois, although locally greater thicknesses have been removed. The coal-to-overburden ratio currently practical is quite variable in Illinois because of local economic factors. However, one foot of coal to each 20 feet of overburden appears to be about average . . ."

I want to stop there and ask you if what you are saying there is that the average overburden ratio in the state is 20 to 1, that is, the average overburden ratio being maintained on a consistent basis at mines presently being operated in the state?

[74] A I'm afraid that my sentence was slightly poorly put together because the intent was related to the same overburden limit of about a hundred feet, and our thought that of the order of 20 to 1 as being not an average stripping ratio, because strip mining in the state now, I know averages of the order of about 5 to 1 less than that, that is, of the order of 15 to 1.

So, what I really was meaning to do and did not quite achieve, as you read it, I was speaking of the 100 to 1 ratio and thinking of the order of a hundred feet of overburden for five feet of coal, is about what appears now to be perhaps upper limits of what they are looking at now. I also didn't mean that to be of any future projection either. That was just current thinking, 15 to 1, fairly average, and perhaps up to 20 to 1 as being upper limits, with the exception of this one operation that I know of, and it isn't impossible that there is another, but offhand the only one that I know of goes up to more than 30 to 1, but it is a highly exceptional situation.

Q That operation that you have reference to, I assume, is the one you are referring to in the [75] last part of this sentence on page 19:

(Reading.) "... although in at least one area, ratios up to 1 to 35 are anticipated."

A Yes.

Q Do you know whether the 1 to 35 ratio at that operation is anticipated on a continuing basis?

A No, I think that would represent a maximum in the operation, not an average in the operation.

[76] Q I see.

A I think the same is true of the—I don't know—the 30-to-1 may or not be the same. I don't really know what their average is.

MR. HEDLUND: May I have just a moment, your Honor?

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: Your Honor, I am sorry. My colleague has been unable to find the portion in Mr. Simon's deposition where we covered the exclusion of towns and so forth. Could we have just a moment?

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: Your Honor, I believe Mr. Cusack's objection is well taken, if, in fact, we covered the question with respect to the exclusion or inclusion of coal, but I do not believe I covered it. The reference that I think Mr. Cusack is making is to a discussion of whether or not town and railroads are [77] included on the face of this map, which has nothing to do with the thrust of my earlier question.

THE COURT: Do you concede that, Mr. Cusack?

MR. CUSACK: I have not read it all, your Honor, on the particular question, but I do not object to the question being asked again.

THE COURT: All right.

MR. CUSACK: I think it was pretty clear what he was talking about, though.

BY MR. HEDLUND:

Q Mr. Simon, my question again was that your total estimates on strip reserves as defined include coal that is underneath towns, railroads, highways, utility right-of-ways, or indeed lakes, such elements as that that might in any event ultimately prohibit mining of coal, is that correct?

A We have made no exclusions, I believe, for the strippable coal, and I believe generally—other than areas already mined out. Areas that have been mined out—

Q Have been excluded?

A —have been excluded, and otherwise culture or other features have not been excluded.

* * *

[83]

REDIRECT EXAMINATION

* * *

(By MR. CUSACK)

Q It is a fact that the Illinois Geological Survey has been engaged at least until 1957 with the preparation of some very detailed reports with regard to stripping coal reserves of Illinois?

A I am sorry—did you say until 1957?

Q From 1957 to the present time.

A Yes. Actually predating that. At various times through the history of the Survey, they have directed some attention to what we are calling strippable coal reserves, particularly since about 1955.

Q And since 1955 to the present date, the Survey has published various circulars entitled "Strippable Coal Reserves of Illinois," is that correct, sir?

A Correct.

Q Mr. Simon, is the Illinois Geological Survey engaged at the present time in additional work in regard to strippable coal reserves in Illinois?

A Yes. The reports to which you referred are part of a series that was initiated about 1955, and I think perhaps the first one was published in 1957. We divided the state into eight regions, and one of them was subsequently divided into two parts, so it now becomes a

nine-part series, numbered Parts 1 to 8, and there are two areas that have not yet been published. [84] Work is fairly well along on both, but it will be at least a year probably before the first of the remaining two is published.

[101]

DIRECT EXAMINATION

MR. CUSACK: Your Honor, excuse me. I believe that our GX-30 is an excerpt and your DX-102 is the entire thing.

MR. HEDLUND: No. Ours is an excerpt as well. I was under the impression that yours was in total.

Your Honor, we will get this worked out. I will move forward on our exhibit.

THE COURT: All right.

BY MR. HEDLUND:

Q I give you, Mr. Simon, what has been received in evidence as Defendants' Exhibit 102, which is the report of the National Fuels and Energy Study group on an "Assessment of Available Information on Energy in the United States", published on September 21, 1962, and I would like to direct your attention to page 79.

MR. CUSACK: Your Honor, I would just like to know, not wishing to be difficult, but we were not told that the defendants were going to use this document, and although we do not object now, we would appreciate it in the future if Mr. Hedlund would let us know the night before.

MR. HEDLUND: I am sorry. I thought I had given you that information this morning, but I will do so.

[102] THE COURT: All right. You can give that to the Marshal.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: I am sorry, your Honor. That is page 79.

THE COURT: I have it.

[103] BY MR. HEDLUND:

Q Mr. Simon, on page 79 in the last complete paragraph on the page, the following is stated:

(Reading) "Estimates of the coal reserves of the United States in the sense of the tonnage that can be mined under existing mining practices and economic conditions and constituting the basis of investment have been non-existent."

This was written in 1962. I would like to know from you whether within your knowledge that was true then and whether that continues to remain the case.

A I would say that it's certainly true, because it's very restrictive in what it requires having been evaluated, and it certainly is true.

Q If you will turn, please, to page 80, the second paragraph beginning on that page, it states as follows in part, and I will omit reading the second sentence and the information set forth on the table:

(Reading) "The Geological Survey's estimate of recoverable coal as of January 1, 1960, totals 830 billion tons. This figure on recoverable reserves has been and is quoted as being equivalent to 2,000 years of production [104] at the current rate. The arithmetic is faultless, but the calculation has little meaning because current rates of output are ephemeral and, second, because there is no indication as to how much it would cost to get the coal produced."

My question to you, Mr. Simon, is as to what your opinion is based upon your knowledge as to whether or not what I have just read was true in 1962 and remains true to the present time.

A I can comment that I would agree with it. I presume that it is true. We resist dividing our reserve figures by a production level to come up with any meaningful figure. So, I would agree with what they have said.

MR. HEDLUND: Your Honor, the Government has announced its intention as part of what I understand to be its rebuttal case to offer into evidence the following publication, "The Search for Low Sulphur Coal," by

Harry Perry and Joseph A. DeCarlo, published by the American Society of Mechanical Engineers in 1967.

I would like to ask Mr. Simon about this document so as to protect ourselves in the event that it is offered into evidence by the Government and is received.

.

[105] MR. CUSACK: The Government objects, your Honor, on the basis that we were not notified that the defendants were going to use this document with the witness.

THE COURT: Looking at the practicality of it, having to call Mr. Simon back here again, I would make the suggestion that he interrogate within this area subject to a motion to strike if you do not use it. Will that be agreeable to you?

MR. CUSACK: Yes, your Honor.

THE COURT: All right.

MR. CUSACK: Thank you.

THE COURT: You may proceed accordingly.

BY MR. HEDLUND:

Q Mr. Simon, I hand you the first three pages of the document that I have just described and ask you to turn to page 3 of that document.

THE COURT: You have not marked it for identification or otherwise? We had better have it marked and then we will have the basis of a motion to strike so that we will know what to do in dealing with that.

MR. CUSACK: May I also please have a copy of the document?

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

[106] MR. HEDLUND: May I ask the court reporter, please, to mark as Defendants' Exhibit 226 for identification a three-page excerpt from an article entitled "The Search for Low Sulphur Coal" by Harry Perry and Joseph A. DeCarlo.

(The excerpt was thereupon marked as Defendants' Exhibit 226 for identification.)

[107] BY MR. HEDLUND:

Q Directing your attention, Mr. Simon, to page 3 of Defendants' Exhibit 226 for identification, I ask you whether or not you know if the figure as set forth on the table with respect to estimated remaining coal reserves in Illinois by sulphur content is accurate?

A We regard that the figure is not accurate, and in the report that was published based on this same study, the figure was not changed, but the item was footnoted. It's an information circular of the Bureau of Mines by Di Carlo and others that is referenced in the Illinois Commerce Commission document. I don't happen to remember the exact number. The figures are shown as they are listed here, but the item is footnoted, something to the effect that it has come to their attention that there is new data that significantly modifies these numbers.

The reserves shown here as less than 2 percent sulphur coal were based on one area in Jefferson, Franklin and Williamson Counties in which our estimates are of the order of one billion tons in the ground, where the figure reported here was eight. We discussed that with both Mr. Perry and [108] Mr. Di Carlo, and they readily conceded that our figure was more valid.

Q Apart from the publications of the Illinois Geological Survey, are you aware of any republication of these figures with respect to sulphur content of Illinois coals that has been released, that is, on a revised basis to take into account the factors you just mentioned?

A We have published as our circular 432 a report on the occurrence of sulphur in Illinois coal in which areas for which there was sufficient information to make an estimate of low sulphur coal reserves, we did make such estimates, and also pointed out a few other areas where low sulphur coal has been reported but for which there wasn't a sufficient information to make reserve estimates. It is presented in quite a different form than it is presented here.

Q Other than the publications of the Illinois Geological Survey, are you aware of any place else where revised figures for Illinois have been published?

A In the recently published document put together by the Department of Health, Education and Welfare—I forget again the exact title—it is [109] also listed in my Commerce Commission hearing. It is a control technology for sulphur dioxide, one of the series of documents that HEW is putting out on various pollutants, and in that document this table modified from DiCarlo and others, actually the published report as opposed to this preprint from an A.I.M.E. presentation, that page was modified and published in that document with the estimates corrected in accordance with our latest information in Illinois.

Q Would the document you refer to be accurately called "Control Techniques For Sulphur Oxide Air Pollutants"?

A That sounds approximately the title. As I say, I'm sorry, I didn't remember exactly the title, but that sounds like it.

MR. HEDLUND: For the record, that is Middleton Deposition Exhibit 3.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q Mr. Simon, does the University of Illinois maintain a steam power plant?

[110] A Yes, they do.

Q Do you know approximately how many tons of coal per year is consumed at that plant?

A I'm sorry. I don't have any authoritative figure. I could only make a guess which it would be. I have no value.

Q Could we have the benefit of your best guess? Would it be in excess of—

A 150 to 200 thousand tons, I would guess, but I really don't know.

Q Has the Board of Trustees of the University taken any recent action with respect to that power plant?

A I don't have first hand knowledge. It's my understanding that they have—

MR. CUSACK: Your Honor, I object on the ground of hearsay.

THE COURT: Objection sustained.

BY MR. HEDLUND:

Q Finally, Mr. Simon, in October of this year the Northern Illinois Gas Company announced that it had discovered coal deposits in McLean and Livingston Counties, about 100 miles southwest of Chicago—

[111] MR. CUSACK: Your Honor I—

THE COURT: Have you finished your question?

MR. HEDLUND: I have not finished my question.

THE COURT: Let Mr. Hedlund finish his question before your object, Mr. Cusack.

BY MR. HEDLUND:

Q Do you have any information upon which you could tell me whether the coal in that area would be classified by the Illinois Geological Survey as strip deposits or deep deposits?

A Our general knowledge is that the coal is too deep for stripping.

MR. HEDLUND: Your Honor, that is all we have.

THE COURT: All right. You may cross examine.

* * * *

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC
COAL COMPANIES; and FREEMAN COAL MINING COR-
PORATION, DEFENDANTS

Before the HON. EDWIN A. ROBSON, Judge,
Tuesday, March 31, 1970,
10:45 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,
appeared for Plaintiff;

MR. HAMMOND E. CHAFFETZ,
MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,
appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM.

. . . .

[144] MR. KEMPF: The other matter, your Honor, we discussed last evening and again this morning between the parties, which was the subject of the depositions themselves.

We now have reached agreement that all portions of all prior depositions, with the exception of that of Dr. Steiner, are in fact in evidence.

Dr. Steiner's deposition and his exhibit were not designated by either party. I understand the Government is reserving its right possibly to ask the Court that that be received at a future time, but since they are not making that request at this time, it would be premature to raise it.

THE COURT: All right.

[144] Thereupon all the depositions offered were received in evidence, except as to the Steiner Deposition.

[145] MR. KEMPF: We would point out he would be appearing as the Court is aware at the trial.

The only other matter is the question of the deposition exhibits. We have conferred again between ourselves, and there is no objection to the admissibility of any deposition exhibit, other than those Maguire deposition exhibits, which we already have discussed this morning, and which we will undertake to review, and a Latimer deposition exhibit, No. 22, which has not yet been offered by the Government and it is premature to raise that at this time.

The balance of the deposition exhibits which the Government has offered into evidence are received in accordance with the Court's ruling of yesterday, as are the portions of the deposition exhibits which the defendants already have designated.

The only ones that are not in the record at this point are the deposition exhibits which the Government and the defendants have reached agreement about in terms of their admissibility, but they have reserved introducing those until possibly their rebuttal case.

THE COURT: All right.

* * * *

[151] THE COURT: If we do this piecemeal, I will be hearing arguments on different points all of the time.

MR. FUTTERMAN: Thank you.

THE COURT: All right; thank you.

MR. HEDLUND: We will waive our reply, your Honor, for the briefs.

THE COURT: All right.

Are there any other housekeeping matters?

(No response.)

THE COURT: All right. You may call your next witness.

MR. HEDLUND: Your Honor, at this time the defendants call to the stand Mr. John M. Morris.

THE CLERK: Will you raise your right hand, please.

(Witness duly sworn.)

JOHN M. MORRIS,

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Would you please state your name, your address and your present occupation.

[152] A John M. Morris, 4320 Narvarez Way South, St. Petersburg, Florida.

THE COURT: Can all counsel hear the witness?

MR. HEDLUND: Mr. Morris, will you speak up, please.

THE COURT: That is not an amplifier, sir. It is merely a tape recorder used by the court reporter.

THE WITNESS: I see. I thought it was an amplifier.

THE COURT: No, it is not.

BY THE WITNESS:

A John M. Morris, 4320 Narvarez Way South, St. Petersburg, Florida, 33712.

My present occupation, I'm retired, but subject to call for certain duties by the United Electric Coal Companies.

BY MR. HEDLUND:

Q What was the position you held upon your retirement from United Electric?

A I was president of the company.

Q Would you please tell me for how long you had been president.

A I was elected at the Board meeting in November, 1959, and retired November 1, 1966.

Q Were you also a member of the Board of [153] United Electric?

A I was.

Q When did you first become a member of that Board?

A 1955.

Q Mr. Morris, would you please briefly describe your basic background, that is, the positions that you have held and with which companies following the completion of your education.

A I graduated from high school in 1917, went to work for the Big Four Railroad at Harrisburg, Illinois, as a clerk, and in 1918 with the Saline County Coal Company in Harrisburg, Illinois, as a billing clerk, later as a salesman, and in 1924 transferred to Chicago where I worked both as a salesman and a traffic clerk. In 1928 that company was sold to the old Peabody Coal Company, and I went to work for the Electric Coal Company, which was a sales company selling the output of United Electric Coal Companies and the Electric Shovel Coal Corporation, and that company went out of existence in '31 or '32, and I stayed with the United Electric Coal Companies in the sales end of the business, and in 1954 I was made sales manager—no. I was made sales manager in about [154] 1948, and in 1954 I was made vice president in charge of sales, and in 1959 president of the company. [155] Q I take it, Mr. Morris that you have been in the coal business, or were in the coal business for the better part of 50 years?

A That's correct.

MR. HEDLUND: Your Honor, I would like to state at this time that Mr. Morris had a lengthy deposition taken by the Government. I do not intend to have Mr. Morris repeat a number of things that were discussed during his deposition, but to discuss with me new material or further explanatory material with respect to his deposition since his deposition is in evidence. As I say, there are a number of things that Mr. Morris discussed with the Government which are now in evidence and I do not intend to recross that ground.

THE COURT: All right.

MR. EISEN: To correct the record, your Honor, you do mean a number of things, answers to questions put by the Government. You are not representing that we had discussed anything privately with your witness, were you, Mr. Hedlund?

MR. HEDLUND: I do not know whether you did or not, but that was not my intention.

THE COURT: All right. Proceed.

[156] BY MR. HEDLUND:

Q Mr. Morris, when you came on the Board of United Electric in 1955, was the company engaged in any merger discussions or negotiations with any other coal company?

A At that time some negotiations were going on with the Truax-Traer Coal Company and they continued for some time. I don't remember how long.

Q At that time, that is, 1955, and during the period when these discussions were going on, why was United Electric interested in a merger with Truax-Traer?

A We, both companies, United and Truax, had mines in the same producing districts, and in a good many cases the coal lands were close to each other. We served to a large degree the same customers, and our reserve position at that time was not too good, and it appeared a consolidation of those two companies would be a good thing, particularly for United, and whatever economies could be made in the cost of production by putting the two companies together would be helpful.

Q Mr. Morris, I direct your attention to what has been received in evidence as Nugent Deposition [157]

Exhibit 38, which is a map of "Shipping Coal Mines in Illinois" by Jack Simon, dated January 1, 1966. I would like to know, in 1955 in what freight rate district in Illinois were the mines of United and the mines of Truax located.

A In 1955 we both had mines in the Belleville District.

Q Is that the district that is down here in the southwestern—

A Southern part of the state.

Q (Continuing.) —portion of the state?

A That's correct.

And, we both had mines in the Fulton-Peoria District.

Q This is the district that sits aside the Illinois River in the vicinity of Peoria, Illinois?

A That is correct.

Q Did United Electric have any other mines in 1955?

A We were still operating the Buffalo Creek Mine, I believe.

Q Where was that located?

A In West Kentucky.

[158] And, Mary Moore at Danville, Illinois.

Q In what portion of the state was Danville?

A That's in the northeastern section of the state.

Q Was that in the Danville Freight Rate District?

A Yes.

[159] Q Do you recall where, if any place, Truax-Traer in 1955 had any other mines?

A They had mines in West Virginia, and that is all that I can recollect.

Q Staying again with 1955, at that time what interest did the top management of United Electric or its Board of Directors have in the deep mining of coal?

A None.

Q Did you have a deep mine at one time, or a deep mining operation, at the Buffalo Creek Mine?

A We tried to use an underground mining machine off of the coal seam going into the side of the pit, and attempting to mine some coal that was too deep to strip and bring it to the pit rather than out through an opening, a slope or a shaft, but that machine failed miserably. It was never a success.

Q Do you recall approximately how long this operation went on at Buffalo Creek?

A A very short time, not over—under two years, at the most.

Q In 1955, did you personally have any interest or experience in mining coal by deep methods?

A No.

Q Did anyone else in the company?

[160] A No one, except possibly people that were out looking for coal, trying to find strip coal primarily, but in doing that frequently they would run across underground properties that might be next door or be in the vicinity, and I think Mr. Latimer, our land man, showed considerable interest in them, and may have brought them to the attention of his people, or his boss, but I never heard anything about it.

Q That is, in 1955.

A That is correct.

Q Again, in 1955, or let's say up until 1958, did Mr. Kolbe express any interest in deep mining?

A I never heard him.

Q I show you, Mr. Morris, what has been received into evidence as Defendants' Exhibit 1, which is a letter, or a memorandum, rather, from Mr. Kolbe to Mr. Hepburn, dated October 9, 1957. The letter states:

(Reading) "In connection with your memorandum of October 8, I'm sorry that the underground miner did not perform. I believe this method of mining has a great future, but underground mining is not our business, and under the conditions I think the only thing for us to do is to continue to wait until someone in the deep mining field produces a [161] working machine and workable system."

Can you tell us, if you know, Mr. Morris, what the machine was referred to here and how that fit in with the operations of the company?

A That was another machine that was supposed to work off of the bottom into the side of the pit and bring the coal to the pit where it was too deep to strip, and I knew very little about this, but it failed, I knew that, and nothing was ever done with it.

Q Do you know whether or not the machine ever mined any coal at all?

A My recollection is that it did not.

Q I would like to show you now, Mr. Morris, a series of letters that have been received into evidence as Defendants' Exhibits 220, 221 and 222, being letters to Mr. B. L. Slack, dated June 29, 1942; a letter to Mr. Herman Schenck, dated July 23, 1954; and a letter to Mr. Nye F. Morehose, M-o-r-e-h-o-s-e, dated June 11, 1956.

These are not signed copies, but bear the title at the bottom, "President." Showing these to you can you tell me who the president of United Electric was on the dates that these letters were written?

MR. EISEN: Your Honor, I would like to note for [162] the record right now that it was only just before court that we received notice from the defendants that they were going to use these documents, and we hope that we get a little better cooperation in that regard so we can prepare more adequately in the future.

[163] **MR. HEDLUND:** I believe last evening, Mr. Eisen, and obviously we are now going to have to maintain a list, but I believe I indicated to you that we were going to use these.

MR. EISEN: I stated what I have stated, your Honor.

THE COURT: Let me make the suggestion that each side give a list of the documents they are going to use the day before so there will be no question about it.

All right. Proceed, Mr. Hedlund.

MR. HEDLUND: Can I have my question back, please.

Q (Read by the Reporter.)

BY THE WITNESS:

A Frank Kolbe was president on the dates of these letters.

BY MR. HEDLUND:

Q In the letter of June, 1942, it states:

(Reading.) "We are not interested in operating any coal mines except strip coal mines."

The letter of 1954 states:

(Reading.) "Inasmuch as we confine our operations to strip mining, we would [164] not be interested in this property."

In the letter of 1956, it states:

(Reading.) "Our operations are all strip operations and we are not considering mining deep coal at the present time."

Based upon your knowledge of the facts and your contact with Mr. Kolbe, do these letters accurately reflect Mr. Kolbe's opinions and thoughts and intentions with respect to deep mining during the period covered by these letters?

MR. EISEN: Objection to the form of the question, your Honor.

THE COURT: On what grounds? Why?

MR. EISEN: I do not know how the witness can testify as to what was in Mr. Kolbe's mind in this period. He can testify as to the conversations he had with him on the subject, or anything he can recall of that nature, but what was Mr. Kolbe's state of mind seems to me goes far beyond the possible knowledge of this witness.

THE COURT: All right. Reframe your question.

BY MR. HEDLUND:

Q Mr. Morris, these letters indicate a lack of interest by Mr. Kolbe in deep mining.

[165] MR. EISEN: I object to counsel's characterization of what the documents indicate. The Government will so stipulate, though, if it will shorten it up, that Mr. Kolbe does express some lack of interest.

THE COURT: Let's not get hypertechnical. The clearly indicate a lack of interest.

MR. EISEN: I merely said, your Honor, that we will stipulate that they do so indicate a lack of interest, if counsel can move on to something else.

THE COURT: He is framing a question and you have interrupted in the middle of the question.

Now, finish your question, Mr. Hedlund, and then you may state any objection to it, Mr. Eisen.

Let's proceed.

MR. HEDLUND: May I have the portion of my question back, please.

THE COURT: Read the question.

Q (Read by the Reporter.)

BY MR. HEDLUND:

Q During the period covered, did Mr. Kolbe ever express to you any interest conflicting with that stated here?

A No.

[166] MR. HEDLUND: Your Honor, may I go off the record for just a moment?

THE COURT: Yes.

(There was an off the record discussion, after which the following further proceedings were had herein, to-wit:)

[167] BY MR. HEDLUND:

Q Mr. Morris, the records of the company indicate that in 1956 United Electric began picking up deep coal reserves in Perry County for Amalgamated Industries. Would you first tell me whether or not Amalgamated Industries was a commercial coal company and generally what line or what industry Amalgamated was in.

A Well, they were not a commercial coal producer. They were a metal company.

Q Why did United Electric enter into an agreement with Amalgamated to pick up deep coal reserves for them?

MR. EISEN: Objection, your Honor, to the form of the question.

BY MR. HEDLUND:

Q Would you please explain, Mr. Morris, if you know the circumstances under which United Electric agreed to acquire deep coal deposits for Amalgamated?

A May I answer?

THE COURT: Yes. There is no objection. The question is rephrased.

BY THE WITNESS:

A They were customers of ours, and through [168] one of our sales people, they approached us to put together a block of coal acreage, underground coal acreage, which they expected to use in their manufacturing process at some future date long ahead. This was long-range planning on their part, and it started about that date, 1956 or 1957, and they have not utilized any of the acreage yet for any of their purposes. But that is how we happened to get into it.

Q Did you have any particular interest at the time in the project that United was undertaking for Amalgamated?

A Not at that time, no.

Q Did you at some subsequent time?

A Yes. Later. I became interested after some discussions I had with Mr. Frank Nugent, who came on our Board in 1959. They were underground people and had the experience, the know-how and some equipment, and there looked like there was an opportunity to build a mine-mouth plant. Illinois Power Company had expressed some interest in building a power plant on that coal field, and I got very interested at that time, being in the sales end of the business, and attempted to put together a proposition for Illinois Power using some of the Amalgamated's coal.

[169] **MR. HEDLUND:** May we go off the record?

(There was a discussion had off the record, after which the following further proceedings were had herein, to-wit:)

THE COURT: Back on the record.

BY MR. HEDLUND:

Q Mr. Morris, do you recall when you first started talking with Mr. Nugent, the president of Freeman, about deep mining possibilities?

A As he became interested in our company from the

standpoint of their stock ownership, I expect it was in about 1957, 1958, along in there.

Q I show you what has been received in evidence as Defendants' Exhibit 4, which is a letter from you to Mr. Frank Nugent, president of Freeman Coal Mining Corporation, dated July 1, 1958.

Is this letter an example of the consultation that you indulged in with Mr. Nugent with respect to deep mining?

A Yes. That is the kind of thing I would take up with him.

Q Do you recall whether or not there were any earlier instances than this?

A I don't recall at the moment.

[170] Q Do you recall the name of the field being acquired for Amalgamated as referred to within the company?

A Beaucoup, if my French is correct.

MR. EISEN: If my French is correct, I believe it means "much coal," your Honor.

BY MR. HEDLUND:

Q Do you recall, Mr. Morris, whether it was before or after July 1, 1958, the date of the exhibit, Defendants' Exhibit 4, that United Electric started acquiring deep coal on its own?

A Do you mean in the vicinity of this Beaucoup Field?

Q That's right.

A It was some time after we made the arrangement with Amalgamated that we started. I can't give you the exact date. It was after, as I stated there.

Q I show you what has been received in evidence as Defendants' Exhibit 5, which is a memorandum from R. J. Hepburn to Mr. F. F. Kolbe, dated July 11, 1958, to which is attached a memorandum from Mr. Latimer to Mr. R. J. Hepburn, dated July 11, 1958, and I ask you if that refreshes your recollection as to when United Electric began acquiring coal, [171] deep coal deposits, for itself?

A Well, from these documents I would say that that is about the time we started acquiring deep coal.

[172] Q What was the name of the field acquired?

A We call it Round Prairie. There was a little town, I believe, in that area with that name.

Q In what freight rate district is Round Prairie?

A It would be in the Belleville district.

Q Would that also be true with respect to Beaucoup?

A Yes.

Q In 1958, July 11th, the date of Defendants' Exhibit 5, what position with the company did Mr. Latimer hold?

A He was called our land man, which meant he was out looking in every direction for principally strip coal.

Q Who was Mr. Hepburn?

A He was vice president in charge of operations.

Q Do you recall whether or not you encouraged Mr. Hepburn to persuade Mr. Kolbe to pick up this field?

A I don't recall, but I must have.

MR. EISEN: I move to strike the answer, your Honor.

THE COURT: It may be stricken.

BY MR. HEDLUND:

Q Did you ever ask Mr. Nugent of Freeman to make a feasibility study with respect to the Round Prairie field?

[173] A I asked him to do it in connection with the discussions we were having with the Illinois Power Company and Amalgamated, but the discussions were terminated because Illinois Power decided to build another unit at their Wood River plant rather than go into the question of a mine-mouth station. As a result, the feasibility study was never made because of the discussions ending before we got into it.

Q In that connection I show you what has been received in evidence as Morris Deposition Exhibit 62, which is a letter dated September 12, 1960, from you to Mr. Frank Nugent. I ask you whether this is the feasibility study or whether this refers to the feasibility study to which you have just referred?

A That refers to it, yes.

Q Do you recall whether or not the possibility of a feasibility study by Freeman was discussed at a Board meeting of United Electric?

A I am sure it was.

Q I show you now, Mr. Morris, what has been received in evidence as Morris Deposition Exhibit 59, which is an unsigned copy of a letter to Mr. Robert S. Overbeck, General Manager of Amalgamated Industries, and signed by—well, the initials in the left-hand corner [174] are "GHU," Secretary.

My first question is, who was GHU?

A That was G. H. Utterback, who was secretary of the company at the time. I will read the letter.

Q The letter states in part that:

"In looking back through our files, I find it was on September 1, 1960, that Mr. Morris, Mr. Sherrill and I met with the following Amalgamated people—"

Do you recall attending that meeting?

A Yes, I do.

Q Would you please, to the best of your recollection, tell me the circumstances leading up to this meeting and what was discussed there generally?

A That was not long after I became president of the company, and I had had no contact with these people, and I felt it was about time I went down there and got acquainted with them. That was the initial purpose. And to find out if we could develop any sort of outlet for that coal, whether or not they would be willing to dedicate some part of the field to us, or if they decided they wanted the coal all for themselves and were going to build a coal mine or have somebody build a coal mine there, and I wanted to find out if we [175] would have first opportunity or what our opportunity would be to do it for them, having in mind that Freeman, who was closely associated with us at that time, would have the know-how as to the operation of that mine.

I did not have in mind that United Electric would do it, and I told him of our relationship with Freeman.

Q Was it before or after or about the same time of this meeting that you had discussions with Illinois Power?

A It must have been about the same time.

Q Do you recall in your discussions with Illinois Power—well, let me ask first, do you recall with whom you had those discussions at Illinois Power?

A Mr. Kraakevich, vice president.

Q Do you recall at that time whether or not you mentioned to Mr. Kraakevich the possibility that Freeman would actually do the mining of the Round Prairie field?

A I am sure I told him that.

[176] Q While you were president, Mr. Morris, did you ever harbor the belief that either the Round Prairie or the Beaucoup field would actually be mined by United Electric?

MR. EISEN: Objection, your Honor. He is leading the witness. He can testify for himself. He is friendly to the defendants, is an employee of the defendant, in retirement. He doesn't have to be led.

MR. HEDLUND: Your Honor, I believe the question is a straightforward one, as straightforward as I can make it. It calls for a yes or no.

THE COURT: He may answer.

THE WITNESS: Repeat the question.

THE COURT: Read the question.

(Question read by the reporter.)

BY THE WITNESS:

A No, I did not.

BY MR. HEDLUND:

Q Other than Round Prairie, were there any other deep coal projects or properties that you can recall discussing with Mr. Nugent or anyone else at Freeman?

A Yes. Some deep coal, too deep to strip, at Fidelity Mine. Some coal we were forced to go away and leave near DuQuoin, Illinois, because of the blasting [177] problem. We investigated some coal in Colorado, Utah, which I asked him to give us an opinion on, and which he did.

That is all I think of right now.

Q I show you, Mr. Morris, what has been received into evidence as Morris Deposition Exhibit 42, which is

a letter from you to Mr. Nugent, dated October 27, 1965.

I ask you if the subject of this letter is the deep coal that you just testified to with respect to the Fidelity Mine?

A No. This refers to some coal that we could strip ourselves.

Q Pardon me?

A We could strip this coal, this particular coal, ourselves, but we were having so much trouble with the property owners in the vicinity of DuQuoin because of the blasting shaking their teacups, that we were going to have to abandon some two or three hundred thousand tons of coal that we might strip if it wasn't for that blasting problem.

So I conceived the idea of maybe we could get Frank to pull that coal out with some sort of machine, to the pit, and then we would take it from there to the plant. But the cost factor turned out to be a good [178] deal like what we tried to do down at Buffalo Creek. This was the same sort of thing that we were trying to do at Buffalo Creek back years before.

So we had, as far as I know, to abandon that several hundred thousand tons of coal. Otherwise, we were in serious trouble with the residents of DuQuoin, Illinois.

Q The first and second lines of this letter refer to a Mr. J. N. Matheson, Jr., who was—well, who was he?

A He was an engineer from Freeman Coal Mining Company.

Q Mr. Morris, I show you what has been received into evidence as Morris Deposition Exhibit 55, which is a letter from Mr. Nugent to you, dated April 26, 1965, and I ask if you can explain the circumstances surrounding this letter and why Mr. Nugent was requesting information from you with respect to the Round Prairie field?

A Frank Nugent had put in some new type underground mining equipment at either one or maybe two of his mines. I think it was an English machine, working on what underground people called the Longwall System.

Apparently he thought maybe the conditions at Round Prairie were such that that system could be [179] used

over there. To determine that he had to know the roof conditions, the thickness of the rock above the coal, and some other information which he asked me to secure for him.

My recollection is that the information indicated the Longwall System could not be used in that particular field.

[180] Q Mr. Morris, I show you what has been received in evidence as Defendants' Exhibit 23, which is a letter from you to Mr. Nugent dated March 14, 1966, and ask you to explain why you were discussing this situation with Mr. Nugent at the time.

A Neither United or—

THE COURT: Do you have that exhibit?

MR. HEDLUND: I am sorry, your Honor. I will give you mine.

THE COURT: All right.

BY THE WITNESS:

A Neither United or Freeman had any coal properties in the West Kentucky Coal Field.

BY MR. HEDLUND:

Q Is that at the time?

A At this time. I heard about this. It happens to be right close to my hometown of Providence, Kentucky, and I was very familiar with it. I was going back there to live, I thought, soon after this because that's when I retired, and I brought it to Nugent's attention thinking he might have some interest in taking over those coal lands and operating that mine, but nothing ever came of it because this man Joe Davis, with the help of some other [181] people, went ahead with the mine himself.

Q Was this deep coal or strip coal?

A Deep coal.

Q Mr. Morris, do you recall the Board meeting of United Electric in 1960 at which it was decided to make further additions to the Industry Field, but only at farmland prices?

A I recall it, yes.

Q Do you recall whether Mr. Kolbe at that meeting or in any prior conversations with you expressed any opposition to that decision and to that policy?

MR. EISEN: I object to the form of the question, your Honor. If he wants to examine as to the conversations that the witness had with Mr. Kolbe either at a Board of Directors meeting or at some other place or time, he can lay a foundation for the conversation.

THE COURT: The objection is well taken. Let's divide it, if he discussed it at a Board meeting, or if he discussed it before. Set the time and place.

MR. HEDLUND: May I have the question read, please.

[182] THE COURT: Read the question.

Q (Read by the Reporter.)

BY MR. HEDLUND:

Q Were you present at that meeting?

A Yes.

Q Was Mr. Kolbe present at that meeting?

A The minutes would show, but I'm quite sure he was.

Q Do you recall whether at that meeting Mr. Kolbe expressed any opposition or dissent with respect to the adoption of that policy?

MR. EISEN: Same objection, your Honor.

THE COURT: The objection is overruled. It is not going back to something prior. It is whether he expressed any dissent. It is not overly leading. We have to proceed expeditiously.

He may answer.

BY THE WITNESS:

A I don't recall any objection he made, no.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q Mr. Morris, I hand you what has been [183] received into evidence as Kolbe Deposition Exhibit Y, which

is a memorandum dated November 7, 1955, from T. H. Latimer to Mr. R. J. Hepburn. In the last paragraph on page 2, Mr. Latimer says in his memorandum the following:

(Reading.) "We have during the years examined something over 200 coal fields. Of those we have taken up either wholly or partially only seven. Some of the best were dropped without going into; some of them taken perhaps not too wisely."

Based upon your knowledge of the facts at the time and before that, were the facts set forth herein by Mr. Latimer true and accurate?

A He made the statement in writing, and I can only say that he was correct, and I would believe what he said.

[184] Q Did you ever bring to Mr. Kolbe's attention any coal reserves that the company turned down?

A In Kentucky again, back a good many years ago, there were two fields that were brought to my attention, being a native down there, and I, in turn, brought them to Chicago, told our people about them, Mr. Kolbe and the rest of them, but nothing was ever done about them. One was the Vogue Mine.

Q Who was it operated by?

A Vogue, V-o-g-u-e, which was operated, I believe, by Peabody.

Q At the time that you brought this to the attention—

A No, this was a virgin field when I brought it in. No production was on it. They later took it over and put a coal mine in there.

The other one was the Pond River field, West Kentucky, and that was developed by the Turtling Brothers from Boise, Idaho, and later I believe sold by them to somebody else. I was nothing but a salesman at that time, and I heard about these fields of coal from my relationship in that state, and I told them about it and they looked at them, and that was the end of it. I never heard any more about it.

[185] Q The last paragraph of Mr. Latimer's memorandum states as follows:

(Reading) "I would like to discuss the entire problem at length with you either here at the office or someplace where we can have plenty of time to go over it thoroughly, as I am afraid we are not building up properly the basis on which our future lies."

Based upon your knowledge of the facts at the time, do you believe that Mr. Latimer's concern was justified?

MR. EISEN: Your Honor, I am going to have to object here. I do not like to unduly delay matters, but the witness at this time had just become vice president in charge of sales. He was a salesman all the way through, had been a salesman up to that time, sales manager. The letter is not addressed to him. I cannot see how he can be competent to comment on this particular sentence as addressed, Mr. Latimer to Mr. Kolbe.

MR. HEDLUND: May I, on voir dire, ask one question, your Honor?

THE COURT: Yes, you may.

BY MR. HEDLUND:

Q Were you a member of the Board of Directors [186] of United Electric Coal Companies at the time this memorandum was prepared?

A Yes.

MR. HEDLUND: I believe he is fully qualified to answer it.

THE COURT: Is there any further comment?

MR. EISEN: I do not see where this qualifies him. If he was a member of the Board, he had just come on the Board.

THE COURT: You have the right of cross examination. I will allow him to answer.

BY MR. HEDLUND:

Q Do you have the question in mind, Mr. Morris, or would you like to have it repeated?

A I would rather you repeat it.

THE COURT: Read the question.

(Question read by the reporter.)

BY THE WITNESS:

A I think his concern was justified.

BY MR. HEDLUND:

Q Mr. Morris, I show you what has been received into evidence as Kolbe Deposition Exhibit C, which is a memorandum dated on its last page May 2, 1946, and it is entitled "Memorandum re Fulton County Production."

[187] MR. EISEN: I am sorry. I do not believe we have a copy of that. Kolbe Exhibit C?

MR. HEDLUND: Z, I am sorry.

MR. EISEN: Oh, I am sorry.

BY MR. HEDLUND:

Q It is signed by A. E. Lamm, H. Reid—

A H. A. Reid.

Q (Continuing)—H. A. Reid, and M. M. Soule, S-o-u-l-e.

Could you first tell me who these people were and what positions they held in 1946?

A A. E. Lamm was secretary and treasurer of the company.

Q That is of United Electric?

A Of United Electric.

H. A. Reid was vice president in charge of operations, and M. M. Soule was vice president in charge of sales, to whom I reported.

Q Can you describe for me the circumstances, if you know, attending the preparation of this memorandum?

A I know that these people were quite concerned at the time about the poor production of our various mines, particularly in Fulton County, and our inability to meet our contract requirements with customers, and [188] business that was offered to us we were unable to take, and I was concerned because at that time, being a salesman, that was my life blood, to get the coal out that we had committed ourselves to. So, I never saw this memorandum, and I didn't know it was written, but I did

know of their concern, because we all talked about it considerably at that time.

[189] Q What was the reasons for your production problems at the time?

A They were trying to use a wheel on the production line, a new wheel, and it broke down too often, didn't accomplish what we thought it would, with the result that our production was badly curtailed. The thinking on the part of these three gentlemen, who had more to do with it than I did, they were going to experiment with something like that, put it aside and use a known piece of machinery to produce your coal with, until you got the machine in such condition as it was operated properly.

MR. EISEN: I would like to object, your Honor, and ask that the witness' answer insofar as what the problem was with these gentlemen, be stricken. He said he had nothing to do with the memorandum and he did not know of its existence. He can testify what he understood at that time or conversations that he had, but to tell what was in their minds and what caused them to write it I think he is not competent to do.

THE COURT: Any comment, Mr. Hedlund?

MR. HEDLUND: I do not believe the witness testified as to what was in their minds. I believe [190] he was testifying as to what he understood them to tell him.

THE COURT: I think the objection is well taken. Objection sustained and the answer is stricken.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q Mr. Morris, I show you what has been received into evidence as Defendants' Exhibit 26, which is a letter from Q. W. Wellington of the Central Illinois Light Company to you dated January 5, 1966.

Prior to January 5, 1966 do you recall any prior conversations with Mr. Wellington about the reserve situation of United Electric?

A Yes, I had many conversations with him about it.

Q Do you recall in general the substance of those conversations?

A He, of course, knew what we had in the way of reserves at both Buckheart and Cuba Mines, and was concerned about our ability to enter into any long-term contracts that would take beyond the life of the properties there in Fulton County, and on this [191] occasion he refused to extend the contract which we had with him. He had the right to extend it, but the letter speaks for itself.

Q Did you in any of your conversations with Mr. Wellington refer to the reserves of Freeman?

A Yes.

Q In what connection?

A I told Mr. Wellington that we could make a contract with him and incorporate in it, to back up such a contract, an agreement to supply coal from Freeman's Crown Mine beyond the time that we run out of coal ourselves, which would secure him an ample supply of coal over the period of time for which he wanted the contract, and I tried to convince him that that was the thing to do, but up to the time I left, I had not been able to get him to agree to it.

Q Upon your becoming president in 1959, did you disclose to any of the major customers of United Electric the fact that you, that is, the company, was associated with Freeman?

A Yes, I went to our major contract customers, each one of them, and talked to them about it, told them about it, and pointed out the advantages which I thought it meant to them as a customer.

[192] Q What were those?

A A backup for United Electric Coal beyond their period of life at the properties we had, the know-how of underground mining which they had and we didn't have, and generally a much stronger company for them to depend upon as a supplier, which was becoming more important all the time the way these big utilities bought coal.

MR. HEDLUND: Your Honor, I believe that concludes this line. That is, if I go into a new subject now, I will be in it for quite a while. Would this be a good place to break?

THE COURT: Then I believe this would be an advantageous time.

MR. HEDLUND: Your Honor, may we go off the record?

THE COURT: Yes.

(A discussion was had off the record, after which the trial of the above-entitled cause was adjourned to 2:00 o'clock p.m. of the same day.)

. . . .

[194]

AFTERNOON SESSION

2:10 p.m.

. . . .

THE CLERK: Case on trial.

THE COURT: Good afternoon. Are you ready to proceed?

MR. CUSACK: Off the record.

(A discussion off the record was had, after which the following further proceedings were had herein, to-wit:)

THE COURT: Back on the record.

The witness will take the stand.

MR. HEDLUND: May I take up a matter before the witness begins, your Honor?

THE COURT: Go ahead.

MR. HEDLUND: Right at the close of the session this morning there was a Government objection, which was sustained, and the answer was stricken.

We have just received the transcript. I believe that only a portion of the answer should be stricken. This is on page 189.

My question was:

"Q What was the reasons for your production problems at the time?"

The answer was:

"A They were trying to use a [195] wheel on the production line, a new wheel, and it broke down too often, didn't accomplish what we thought it would, with the result that our production was badly curtailed."

I believe that answer is responsive to my question. The balance of it, I believe, is that which should be stricken.

[196] THE COURT: Do you agree with Mr. Hedlund's contention?

MR. EISEN: I think if I could have a few moments, your Honor, to read the prior question or two—

THE COURT: I am ready to rule on it now, if you have any contention.

I think Mr. Hedlund is quite right on that. I thought he was talking about the thinking on the part of these men, but he said "They were trying to use a wheel on the production line, a new wheel, and it broke down too often, didn't accomplish—"

The latter part certainly are the thoughts of the other men, and the Court will allow the first sentence of that answer on page 189 to stand. The balance of it will be stricken, as the Court has previously ruled.

You may proceed.

[197] JOHN M. MORRIS,

called as a witness on behalf of the defendants herein, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

(continued)

MR. HEDLUND: At this time I would like to have the Court Reporter mark as Defendants' Exhibit 227 a memorandum dated November 1, 1963 from R. H. Inman to Mr. R. J. Hepburn re Kerr Coal Company.

(The document was thereupon marked Defendants' Exhibit No. 227 for identification.)

THE COURT: Is this marked for identification, Mr. Hedlund?

MR. HEDLUND: For identification, that is correct.

THE COURT: All right.

MR. HEDLUND: I recall, your Honor, this document is one that was originally indicated to us by the Government as being offered into evidence in their case in chief. It has not been at this point, so I believe that we will probably make an offer of this document upon the conclusion of the examination of [198] this witness.

THE COURT: All right.

BY MR. HEDLUND:

Q Mr. Morris, you testified this morning I believe, with respect to a Colorado Coal Company about which you consulted with Mr. Nugent and with Freeman. Do you have in front of you what has been marked for identification as Defendants' Exhibit 226?

A Yes, I do.

Q Is this the coal company and the transaction to which you referred this morning?

A That is one of them, yes.

THE COURT: Excuse me. I thought he said 227. You just said 226.

MR. HEDLUND: I am sorry. It should be 227.

THE COURT: All right.

[199] BY MR. HEDLUND:

Q The first sentence of this document states:

(Reading) "In the afternoon of October 29, Mr. Jerry Swanson of The Freeman Coal Company and I visited the Kerr mine."

What position with Freeman did Mr. Jerry Swanson hold in 1963?

A He was one of their mining engineers.

Q You mentioned that this was one of the situations out in Colorado that you had had in mind. Was there another?

A Yes. We acquired what we called the Hayden Field, near Hayden, Colorado, which had considerable strip area, and surrounding it was a great amount, undetermined amount, a great deal of underground coal, and we consulted with Freeman about what might be done with that underground coal.

Q Approximately when was this?

A I would say not too long before that, or after that, '62 or '63.

Q Mr. Morris, I hand you now what has been received in evidence as Government Exhibit 88, which is entitled "Common Known Customers of The United Electric Coal companies and Freeman Coal Mining Corporation [200] showing destination points, 1965."

MR. HEDLUND: Does the Government have a copy for the Court?

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: Would your Honor mind if I waited while they get a copy of this for you?

THE COURT: You can proceed and then I can look at it. Oh, here it is. All right.

BY MR. HEDLUND:

Q As you can see, Mr. Morris, the most left-hand column of this document has a list of customers. The central portion, which is labeled "The United Electric Coal Companies," and gives information on shipments with respect to the mines, the destination, the dollar volume and the number of tons, and there is corresponding information on the right-hand portion with respect to Freeman Coal Mining Corporation, again showing the name of the mine and the destination of the shipments, its dollar volume and number of tons.

Before we go into this, referring to Nugent Deposition Exhibit 38, would you please indicate in which freight rate district the Cuba, Buckheart and Banner [201] mines of United Electric are located.

A In the Fulton-Peoria district.

[202] Q This would be in the area adjacent to, running to the west of the Illinois River around Peoria?

A That is correct.

Q In what freight rate district is the Crown Mine located?

A In the Springfield District.

Q That would be near the town of Springfield, Illinois?

A That is correct.

Q In what freight rate district is the Fidelity Mine of United Electric Coal Companies located?

A Belleville.

Q It would be in this area, in the southern most western portion of the state?

A That is correct.

Q What freight rate district are the Orient 3, 4 and 5 Mines of Freeman located?

A Southern Illinois.

Q That is this area in the southernmost eastern portion of the state (indicating)?

A That is correct.

Q Turning first to the shipments to Caterpillar Tractor Company shown on Government Exhibit 88 for the year 1965, had United and Freeman in that year [203] been independent, would the shipments to Caterpillar have been competitive?

[204] MR. EISEN: Your Honor, that is objected to as pure speculation.

THE COURT: Lay a foundation as to his knowledge, background, and what he would be able to base his opinion on.

MR. HEDLUND: Your Honor, I can do that, but I submit the initial description of Mr. Morris in terms of his selling responsibility and the fact that he was president of that company and has always been in sales—

THE COURT: I think the objection is a proper one. Lay a foundation. Indicate if he has knowledge of these companies and if he had knowledge at that time, had knowledge before, and had knowledge at this time.

MR. EISEN: I also would like to state, your Honor, that it calls for an opinion and conclusion of the wit-

ness, and it asks him to answer one of the ultimate issues in the case.

THE COURT: The Court will consider it in its context. If he has the background and the knowledge and the foundation is laid for that, I will rule later on that objection.

You may proceed.

BY MR. HEDLUND:

Q Mr. Morris, when did you become president of United Electric?

[205] **A** November, 1959.

Q Would you tell us what responsibilities after 1959 in your role as president you had with respect to the contracts of United Electric Coal Companies?

A Reports were made to me on all of the activities of our sales department, as to what they were doing and where, and I still had over-all supervision over sales as president; the vice president in charge of sales reported to me and kept me informed as to what was going on after I became president.

I personally took part in discussions with some of the major customers, particularly Union Electric, Northern States Power, Interstate Power, and Central Illinois Light.

I did not in all cases go and see them, but some that I knew quite well in my experience as sales manager and then vice president I continued to keep in contact with.

Q Did major coal contracts routinely come to you for your approval prior to their execution?

A Yes, they did.

[206] **MR. HEDLUND:** I submit, your Honor, that I have established a foundation for pursuing this line of questioning with this witness.

THE COURT: Is there any objection?

MR. EISEN: Same objection. I do not see where he has cured the hypothetical aspect of the question.

THE COURT: We may answer the question, with your objection noted as to that question.

He may answer, subject to the objection.

MR. HEDLUND: Mr. Reporter, can you find the question?

(The pending question was read.)

BY THE WITNESS:

A No.

BY MR. HEDLUND:

Q Would you explain why.

A Cuba-Buckheart, our own properties, mines, go to certain destinations, where they have the freight rate advantage. Crown Coal went to other destinations, where they had the freight advantage.

Q Focusing specifically on the shipments to the Capterpillar Tractor Company, would you describe with respect to Caterpillar the plants to which United could ship and the plants to which the Crown Mine could ship?

[207] **A** The Crown Mine could ship to Decatur, Illinois. We could not. Our mines could ship to East Peoria, and Montgomery, and they couldn't.

Q With respect to the shipments in 1965 shown on Government Exhibit 88 to the plants of Central Illinois Light Company, had the two companies been independent in 1965 would the shipments have been competitive?

A No.

Q Could you explain—

MR. EISEN: Same objection, your Honor.

THE COURT: You may have a standing objection, and he may answer subject to that objection. You have the right to cross examine. After that, you may move to strike if you desire.

MR. EISEN: Thank you.

THE COURT: Proceed.

MR. HEDLUND: Do you have my question in mind?

THE WITNESS: Yes. I understand it.

BY MR. HEDLUND:

Q Your answer is—

A No, I said no.

Q Could you explain why?

A We could reach Peoria from our Cuba-Buckheart

mines, and they could not. They could reach Springfield, and we could not.

[208] Q With respect to the shipments to the Grand Tower Plant of Central Illinois Public Service Company, would the shipments of the Fidelity Mine and the Orient Mine, had the two companies been independent, have been competitive?

A No.

Q Will you explain why?

A In the case of Orient, they shipped in there what is known as dust, which is a by-product made from careful preparation of metallurgical coal and which is sold at less than cost and to certain plants that are able to use it.

In the case of Fidelity, it was a very small amount of carbon which we make occasionally, not very often, and it was a dump proposition on our part.

Q With respect to the shipments in 1965 to Central Illinois Public Service Company, to the Meredosia Plant of CIPS, would those shipments have been competitive had the two companies been independent?

A No.

Q May I have your reasons?

A That is a normal market outlet for Fulton County coal, directly on the river.

[209] Q Pausing there, can you tell me where Meredosia is, approximately?

A It is south of Havana, Illinois on the Illinois River.

Q It would be approximately here (indicating)?

A I can't see from here.

Q Why don't you come over—

MR. EISEN: The Government will stipulate it is south of Havana on the Illinois River.

THE COURT: All right. You may proceed. The record may so show.

BY MR. HEDLUND:

Q Would you continue, please?

A So the transportation situation so far as Fulton County mines was concerned, it was very much to our advantage there.

The Crown coal that went in there is again a by-product dust.

Q Let me stop you right there. While you were president did United Electric produce or sell any dust?

A No.

Q Why is that?

A We had no high-priced domestic or [210] metallurgical coal. Our coal wouldn't suit that purpose, and we just didn't make it, couldn't make it. Our plant wasn't set up to make it.

[211] Q Turning to the third page of this document, Mr. Morris, and the shipments shown to the Tennessee Valley Authority, would the shipments from the Fidelity Mine and the shipments from the Orient Mines have been competitive had the two companies, United and Freeman, been independent?

A No.

Q Would you explain that, sir.

A The shipments from Fidelity Mine were put on a contract taken by Freeman at a price below our cost. We used it as a dump in certain periods of the year when we couldn't market all of the coal we mined, and to keep the mine running we could ship on that contract if and when we pleased, and we did not take any order in there ourselves because it was too low to commit yourself on a long-term or even a yearly basis. We simply used it as a convenience.

Our transportation was such that we couldn't net at the mine a fair price for it.

Q With respect to the shipments in 1965 to the Venice plant of Union Electric from both Freeman and United, would those shipments have been competitive had the two companies been independent?

A No.

[212] Q Would you explain why?

A Venice is another plant that is able to use this refuse or this byproduct called dust, and you will note that we only put 3,000 tons in there from Fidelity. I can't tell you how that happened to go in there.

Q Is the Venice plant, to your knowledge, served by other producers in the Belleville district?

A Not to my knowledge.

Q With respect to the shipments in 1965 to the Meramec Plant of Union Electric from the Fidelity Mine and the Orient Mine, would these shipments have been competitive had the two companies been independent?

A No.

Q Would you explain that, sir.

A The Meramec Plant is a natural location and outlet for Belleville coal on the river due to transportation charges, and the coal that Freeman put in there is again dust or a byproduct.

Q With respect to the 1965 shipments to Wisconsin Public Service Company in Green Bay, Wisconsin, would those shipments have been competitive had the two companies been independent?

A No.

[213] Q Would you explain that, please.

A The requirements of those plants at Green Bay, their specifications and their boiler equipment, required a high BTU, high quality coal, such as Southern Illinois, and we could not bid on it. Their specifications prevented us from even making a proposal. Freeman had trouble fulfilling their obligation, and came to us and allowed us to ship this tonnage, which was mixed, as I am quite sure, at the dock in Chicago as it went into the boat.

Q Why was it necessary to mix it?

A They couldn't run their plant on Fidelity coal by itself. It wasn't strong enough BTU coal.

[214] MR HEDLUND: I believe I misspoke before this in saying the page that we were reading from. I believe that is page 4 of Government Exhibit 88. I would like to back up to, in fact, page 3.

THE COURT: I only have four pages, and this is page 3 that you are reading from.

MR. HEDLUND: That I was just reading from, your Honor, in your copy?

THE COURT: Yes.

MR. HEDLUND: Yes. Well, I believe that should be page 4, because that is the final page of this document. That is the total tons. So, we will try to get it resorted.

BY MR. HEDLUND:

Q May we please turn to the page that starts with Dairyland Power Cooperative, in whichever order it appears.

Would the shipments from Freeman and United Electric to the Alma and Stoneman Plants of Dairyland Power Cooperative have been competitive had the two companies been independent in 1965?

A No.

Q Would you explain that, sir?

A Those plants are located directly on the [215] Mississippi River and transportation-wise are, for the Belleville District Mines, including Fidelity, their best market. The coal that Freeman put in there again was the by-product known as dust.

Q With respect to the shipments in 1965 to Foote Minerals KEMCO Operations in Keokuk, from both the Orient Mine and the Cuba and Buckhardt Mines of United Electric, would those shipments have been competitive had the two companies been independent?

A No.

Q Would you explain that please?

A Cuba Mine is located on the TP&W Railroad, which is a direct route to Keokuk, and we have a very favorable freight rate in there which makes it a natural market. The coal that Orient put in there was dust which they shipped by barge up the Mississippi River. Two different types of merchandise.

Q With respect to the shipments in 1965 to the Vermillion Plant of Illinois Power Company from both the Mary Moore Mine and the Orient No. 4 and 5 Mines, would those shipments have been competitive?

A No.

Q Before I ask for your reason, in what [216] freight rate district was the Mary Moore Mine of United Electric located?

A Danville.

Q That is over in the far eastern portion of the state?

A Yes.

Q Where is the Vermillion Plant, or rather, where is Oakwood, Illinois?

A Right northwest of Danville, about eight miles.

Q How far was the plant? Do you recall how far approximately the plant was from the Mary Moore Mine?

A Fifteen miles.

Q Could you now give me your explanation as to why these would not have been competitive?

A That was the reason. We had a very low freight rate in there. The mine was put in to supply Illinois Power when they built that plant there, and the Freeman shipments were to fill out a contract on which we owed some tonnage, and could not deliver because we ran out of coal at the Mary Moore Mine.

[217] Q Do you recall through what period of time your United contract ran with Illinois Power for its Vermillion Plant?

A I've forgotten when the mine started, but it was the entire output of the mine from the time it started, and then we began to run out of coal in about 1962 and we made an extension with them where they agreed to extend the contract if we picked up some more coal, which we did, but we didn't get as much as we thought we had, and that second deal we ran out of coal and shut the mine down in 1965. That was when we had some tonnage left that we had estimated we were going to mine and couldn't mine, and the Illinois Power took the position they thought that should be fulfilled, and they knew of our relationship with Freeman, and I told them of it, and Freeman agreed to ship the tonnage although it was a sacrifice to them.

Q Did Freeman continue to ship the tonnage until the end of the United Electric contract?

A They shipped until they completed the original estimate that we had given Illinois Power as to how much tonnage would be available under that contract.

Now, how long that was, I can't answer you right now.

[218] Q With respect to the Hennepin Plant of Illinois Power, could that plant have been served competitively by any Freeman mine?

A No.

Q With respect to the Wood River Plant of Illinois Power, could United Electric have shipped competitively to that plant, competitive with the shipments shown here

in Orient No. 3, had the two companies been independent?

A That was Freeman's shipments in there with again this byproduct, dust, and we couldn't compete with that. Belleville Coal did go into that plant on a unitized train rate set up by the GM&O Railroad, and we weren't on this GM&O, so we couldn't participate in that movement.

Q With respect to the shipments shown in 1965 to the East Chicago Plant of Inland Steel Company, would those shipments from Cuba, Buckheart and Orient have been competitive had the two companies been independent?

A No.

Q Would you explain that, sir.

A Two different kinds of coal. Our shipments were steam coal going into their boiler plant. Freeman's [219] shipments were metallurgical coal for making steel.

Q While you were president, did United Electric produce any metallurgical coal?

A No.

Q Could it have?

A No.

Q Finally, with respect to the shipments in 1965 to Marquette Cement Manufacturing Company to various plants from Cuba, Buckheart and the Orient Mines of Freeman, if the companies had been independent would these shipments have been competitive?

A No.

Q Would you explain that, sir.

A Our coal went to the Oglesby Plant of Marquette, which is near LaSalle, Illinois, on the river, where we had the advantage of low transportation cost by river. Orient coal went to Cape Girardeau, Missouri, Des Moines, Iowa, and Milwaukee, and we had no coal that would compete with them for that business at those plants.

Q I hand you now, Mr. Morris, what has been received in evidence—and does the Government have a copy for the Court—of Government Exhibit 89, which is a similar table for the year 1966.

Mr. Morris, with respect to the shipments [220] shown in Government Exhibit 89 for the year 1966 with respect to Caterpillar Tractor Company, Central Illinois Light Company, Central Illinois Public Service, Dairyland Power

Cooperative, Foote Minerals KEMCO Operation, Illinois Power, Marquette Cement, Tennessee Valley Authority, Union Electric and Wisconsin Public Service, were I to ask you exactly the same questions with respect to these shipments in 1966 as I did with respect to these shipments in 1965, would your answers be the same?

A They would be the same.

[221] Q Mr. Norris, I hand you what has been received in evidence as Defendants' Exhibit 27, which is a one-page memorandum with an attachment from Dale Emling to you, dated March 8, 1966. I hand this to you and wish to ask first who Dale Emling was?

A He was our chief engineer at this time.

Q Why did you ask Mr. Emling to compile this information shown on the attachment?

A To report to our Board of Directors our reserve situation as of that time.

Q Do you recall the purchase by United Electric of coal reserves from Union Collieries Corporation in 1958?

A Yes, I do.

Q Who was Union Collieries?

A It was a coal producing company owned by the Union Electric Company of St. Louis, and their entire output was used in the Union Electric Company's plant.

Q Did Union Collieries have a mine?

A Yes.

Q Where was that located, if you know?

A Right near our Fidelity Mine, known as [222] Kathleen.

Q Would that be in Perry County, Illinois?

A Perry County, yes.

Q What freight rate district would that be located in?

A Belleville Freight Rate District.

Q Could you please explain the circumstances surrounding the purchase of these reserves from Union Collieries?

A The Union Electric Company decided they wanted to get out of the coal mining business.

Q Did you say Union—

A They decided they wanted to discontinue mining coal.

Q I did not understand whether you said Union Electric or United Electric.

A Union Electric. Not United Electric, no.

Q Sorry.

A And they had some strip coal which was right close to us. They had some underground coal left. They were going to abandon this mining and buy their coal, which was very interesting to us. We worked out an arrangement to buy the strip land, and we had to take the underground coal with it. It was contiguous to it.

[223] Later we were able to make a contract with Union Electric to ship a substantial tonnage from our Fidelity Mine.

Q What became of the mine itself, its equipment and tippie?

A The Truax-Traer Coal Company bought the tippie and other equipment, and I am not sure what they did with it. They disposed of it. They also later were able to make a contract to ship coal to the Union Electric Company's plant.

MR. HEDLUND: Does the Government have an exhibit designation for the 1961 annual report of United Electric?

MR. CUSACK: It is a Government exhibit, your Honor. It is in evidence.

MR. HEDLUND: I realize that. I just wanted to describe it for the record.

BY MR. HEDLUND:

Q Mr. Morris, I hand you page 7 of the 1961 annual report of the United Electric Coal Companies, which has been received into evidence as Kolbe Deposition Exhibit 7.

MR. CUSACK: Excuse me. That is Government Exhibit Kolbe Deposition Exhibit 7, which is also Nugent Deposition Exhibit 26, for the record, your Honor.

[224] THE COURT: We have two designations, and I should like to know which we are going to use for the purpose of the record.

MR. CUSACK: Government Exhibit Kolbe Deposition Exhibit 7, the 1961 annual report.

THE COURT: All right. Just so I am clear in my

own mind, there won't be any conflict between this numbering and the other Government numbering, will there?

MR. CUSACK: No, your Honor.

THE COURT: You may proceed.

BY MR. HEDLUND:

Q Directing your attention, Mr. Morris, to the paragraph on page 7 which is headed "Coal Deposits," it reads as follows:

"At the year end your company owned or controlled 122 million tons of recoverable coal deposits. This tonnage is greater than in previous years because for the first time we are including underground coal. The total amount that can be mined by the strip method is 86 million tons, and 36 million tons are suitable for underground mining.

"We have confidence in the future of coal, and we continue to add to our holdings [225] when worthwhile deposits are offered to us."

My first question is, as used in the annual report for 1961, what did the term "recoverable" mean as used in "recoverable coal deposits"?

MR. EISEN: Objection.

[226] THE COURT: What grounds?

MR. EISEN: It calls for an opinion and conclusion of the witness. If he wants to ask him what he considers it meant in his own mind, that is all right, but the annual report has to be passed on by the Board of Directors, and there was discussion about it. If he wants to ask him about conversations they had at the time the annual report was passed upon and approved or whether they discussed the language to be used, that would be appropriate.

However, to ask this man what the term means as used in the annual report, unless it is part of his own letter, and I do not think it is, I think is improper—it is a part of the report in general.

THE COURT: In my looking at it, it is signed by this witness.

MR. HEDLUND: He was the chief executive officer of the company at the time and responsible for the annual

report. I believe he is qualified to testify as to what was intended to be meant by the term.

MR. CUSACK: Your Honor, the letter is signed at page 8, and this follows on page 7 in the body of the annual report.

[227] THE COURT: Well, in my reading of it, and I just looked at it, they are enclosing the annual report, and he goes on to express his appreciation and all that.

The objection is overruled. The witness may answer.

BY MR. HEDLUND:

Q Do you have my question, or should I repeat it?

A I might say that I dictated that myself. The reason it was used for the first time was because we included underground coal in our total for the first time.

Q Why did that require you to use the word "recoverable", then?

A Because you don't recover over about 50 or 60 percent of the coal that you have under lease or in the ground when you mine it by the underground method, whereas by stripping you get nearly all of it.

So to be perfectly clear to our stockholders, the people that read this report, I wanted to make sure they understood that this was recoverable if we mined that underground. For instance, we might have under lease 36 million tons and can [228] only get 18 million if you mine it by underground mining.

That was the reason.

Q Was there any intention to imply that all of the deposits were economically recoverable?

A No.

[229] Q The same wording occurs, and counsel for the Government can correct me if I am wrong, the same wording reoccurs in the annual reports to the company for 1962, 1963 and 1964.

Now, Mr. Morris, in those reports is the same meaning of the word "recoverable" intended as it was in this one?

A That is correct.

Q Why did you disclose in the 1961 annual report for the first time to your stockholders that you held deep coal deposits?

A By that time we were closely associated with the Freeman organization, and Frank Nugent thought our stockholders were entitled to know of this underground coal, because with our close association with Freeman, it might be possible for them to mind it for us, and he felt it should be disclosed in all fairness to the stockholders, that they should know about it.

Q Do you recall whether or not the decision to disclose the deep coal deposits was discussed at a Board meeting of United Electric?

A It was.

Q I notice, again, in the 1961 annual report that the terminology with respect to coal reserves [230] was changed from that in prior years; whereas in prior years these were referred to as "strip coal reserves," in 1961 and subsequent years they were referred to as coal "deposits."

Why was this change in terminology made, if you know?

THE COURT: What paragraph is this?

MR. HEDLUND: The word "deposits" appears—

THE COURT: I thought you were quoting.

MR. HEDLUND: No.

THE COURT: All right. Go ahead.

BY MR. HEDLUND:

Q Would you answer the question.

A Again, that was a question of properly informing our stockholders. "Total reserves" to me and other members of the Board meant that those coal lands would be mined and sold, that coal would be produced in our list of coal deposits, with some isolated areas that probably never would be mined, and it appeared that might be misleading to our stockholders. So rather than to specify it as "coal reserves," which were adjacent to an operating mine and definitely would be produced, the Board decided to change this to "coal deposits," so we wouldn't be charged with misleading the public and the stockholders.

[231] Q Mr. Morris, I show you now what has been received into evidence as Government Exhibit 203, which

are the minutes of the United Electric Coal Companies' board of directors meeting of July 13, 1962.

Does your copy have page 4152?

A Yes.

Q The top paragraph reads:

"The chairman then presented a resolution approving this company's action in signing a coal lease with United States Steel Corporation under which the life of Mary Moore would be extended for some four years."

Is this the acquisition to which you earlier have referred with respect to the extension of the Mary Moore?

A Yes, it is.

Q Mr. Morris, I hand you an excerpt from the meeting of United Electric's board of directors on May 10, 1963, which is page 4201, and which is Government Exhibit 204.

Referring to page 4201, the following is stated:

"The chairman stated that some [232] form of heat dried Fidelity screening is becoming necessary. During the past winter the Fidelity shipments in some cases were restricted in favor of heat dried competitors' coal, and this experience is becoming more prevalent each winter.

"Inasmuch as the life of the mine will extend at least another 20 years, it is possible that the investment in a complete new cleaning plant—" and so on.

Would you tell me on what basis the prediction was made that the life of the Fidelity Mine would extend 20 years?

MR. EISEN: I think it said "at least 20 years".

BY MR. HEDLUND:

Q At least 20 years.

A That was a guess at that time, based on what we had, what I thought we could acquire adjacent to the properties, and also to justify the purchase of this heat drier, I included in my own thinking the possibility

that Freeman would mine that underground coal eventually that we had from Union Electric and bring it through this plant.

The total of all that at that time, [233] plus the fact that our annual production rate was expected to decline as we got into deeper overburden, which we were faced with very shortly after this—with all of that, that 20 years was about right.

[234] Q I hand you now, Mr. Morris, what has been received in evidence as Morris Deposition Exhibit 14, being a letter dated May 3, 1965, from yourself to Mr. Frank Nugent.

In the past paragraph at the bottom of the page there is the following:

"If we complete our trade with Truax-Traer, because of the difference in overburden depths and thickness of coal seam, we give up nearly 2 million tons more in the North Canton area than we get back from them in the West Cuba field.

"Our reserves picture would then change by a reduction in the 41 million tons of Buckheart and gain at Cuba, so our Buckheart reserves will then total approximately 33 million tons, and our Cuba reserve approximately 8 million tons.

"At an estimated 22,500,000 tons a year production with Buckheart, we would then have about 14 years life there, and, as indicated above, from 8 to 10 years at Cuba."

THE COURT: You stated "22,500,000 tons". My copy has "2,500,000."

[235] MR. HEDLUND: Thank you. I certainly should not have stated 22,500,000.

BY MR. HEDLUND:

Q First of all, Mr. Morris, was the trade with Truax-Traer completed?

A Yes.

Q By the time this letter was written?

A It was not completed on May 3, 1965. It says there "If we complete our trade". It was completed after that.

[236] Q Since your deposition, have you had an opportunity to look at the records of United Electric Coal Company to determine as a result of this trade with Truax what you actually acquired from them and where and what you actually gave up?

A I can only give you what I was told in our office without looking at any documents. I was told that by our present general manager in charge of production, but I did not look at any actual engineering records. He simply told me what had developed over there.

Q Can you tell me what he told you?

MR. HEDLUND: Your Honor, we have evidence that will support this, but if I may continue with him as to what his understanding was.

THE COURT: All right.

BY THE WITNESS:

A He told me that at Cuba, instead of this 8 million tons, we actually wound up with only 4 because of some faults in the coal and some other difficulties that developed, so we had to rearrange the trade so that we would get the other 4 million out of North Buckheart where it would be available for the Buckheart Mine instead of Cuba.

So, we actually didn't get what we had hoped [237] for in the Cuba Mine which we were trying to extend the life of very definitely.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q I show you now, Mr. Morris, what has been identified as Morris Deposition Exhibit 71, which is an excerpt from the minutes of the United Electric Board of Directors in September, 1966.

MR. HEDLUND: May we have just a moment, your Honor?

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: For the record, Morris Deposition Exhibit 71 is not in evidence.

MR. HEDLUND: I have misdescribed the document that your Honor has. I am looking for it.

THE COURT: All right.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

[238] **MR. HEDLUND:** To save time, I would ask the reporter to mark this Defendants' Exhibit No. 228 for identification, an excerpt from the Board meeting of United Electric in September, 1966, being pages 4386 through 4389.

(The document was thereupon marked as Defendants' Exhibit 228 for identification.)

BY MR. HEDLUND:

Q Mr. Morris, I direct your attention to the second paragraph of the minutes, where it states:

(Reading) "After mining all of the coal in the present location (Green Pit), the estimated reserves at Fidelity that can be stripped is 23 million tons."

Will you please tell me, sir, on what the 23 million ton estimate was based.

A It was based on figures given me by our Engineering Department, plus what we considered potential or available to us nearby the Fidelity Mine, and subsequent to that time you can determine whether we acquired those areas.

MR. HEDLUND: Thank you.

THE COURT: Are you going into a new area now?

[239] **MR. HEDLUND:** Yes, your Honor, I am.

THE COURT: Then we will take a short recess.

(There was a short recess, after which the following further proceedings were had herein, to-wit:)

THE CLERK: Case on trial.

THE COURT: The witness may take the stand. You may proceed, Mr. Hedlund.

[240] Did you get some water for the witness?

THE CLERK: Yes, your Honor.

THE COURT: All right. Thank you.

BY MR. HEDLUND:

Q Mr. Morris, in this case the Government contends that United Electric's coal reserve position was adequate and improving when representatives of General Dynamics went on the Board of United Electric, and but for the interference in the affairs of United Electric by General Dynamics, United Electric would have acquired additional coal reserves.

At any time while you were president of United Electric, did Frank Nugent or any of the Material Service-Freeman-General Dynamics representatives hold back United in acquiring any additional economically mineable reserves?

A No, they did not. The contrary was true. Nugent especially, and other members of the Board, continually asked me to exert every effort to get strip reserves which the company could utilize.

Q During the time that you were president, did Frank Nugent or the Material Service-Freeman-General Dynamics representatives ever block or try to interfere in the expenditure of capital funds or [241] other necessary funds of United Electric for any worth-while business purpose?

A No, they did not. In fact, during the six or seven years I was president, our capital expenditures were extremely large and probably greater than any six-year period in the history of the company.

Q What were some of the things that the company bought in those six years?

A They bought two big stripping machines at over \$3 million apiece, they bought 20, hundred ton trucks at over \$125,000 apiece, they put in a heat drier, they—

Q At an approximate cost of what?

A \$700,000.

They tore down and moved the wheel from Fidelity to Banner at an expense of—I will have to give you an estimate on that—\$750,000 or more, and there was a lot

of other miscellaneous equipment purchased during that period.

So, our capital expenditures during that period were quite heavy.

Q While you were president, did you have to submit to General Dynamics in New York for [242] approval any capital expenditure request?

A No, I did not.

Q At the time you left United Electric, what position did Bob Donaldson have, if you recall?

A Superintendent of the Banner Mine.

Q Did Mr. Donaldson ever have any deep mining experience?

A Not that I ever heard of.

Q At 513 of the deposition of Mr. Frank Kolbe, in referring to the appraisal of Paul Weir & Company of the Banner mining properties in 1959 prior to the time the mine was opened, Mr. Kolbe said the following:

(Reading.) "He said",

Referring to Paul Weir,

"I'll give you the value of the equipment"

And then continuing with Mr. Kolbe,

"... and that was nuts for a mine that was going to earn \$1.65 a ton"

Mr. Morris, while you were president, did the Banner Mine ever earn, either before or after taxes, \$1.65 a ton?

A No, it did not.

[243] Q At page 811 of the deposition of Mr. Kolbe, he makes the following statement:

(Reading) "I might also point out that Mr. Nugent has a negative attitude and that I have a positive attitude and that makes a big difference in everything."

As a result, Mr. Morris, of your contact in business situations in the course of your presidency and before with United Electric, do you believe that Mr. Nugent has a negative attitude?

A No, I do not.

Q The Material Service-Freeman representatives were elected to the Board of United Electric in 1959. Was Mr. Kolbe in favor of their election or opposed?

A No, he was not. He was not.

Q He was not what, sir?

A He was not in favor of it.

MR. HEDLUND: Your Honor, I believe that is all I have on direct examination. The Government has indicated to me that their cross examination will go beyond the normal adjournment hour.

THE COURT: I thought they would be through in ten minutes.

• • • •

[249]

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

**GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC
COAL COMPANIES; and FREEMAN COAL MINING COR-
PORATION, DEFENDANTS**

**Before the HON. EDWIN A. ROBSON, Judge,
Wednesday, April 1, 1970
10:40 o'clock a.m.**

PRESENT:

**MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,**

appeared for Plaintiff;

**MR. HAMMOND E. CHAFFETZ,
MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,**

appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM.

• • • • •

[256] THE COURT: Will the witness take the stand. Are you ready to proceed with the cross examination?

MR. EISEN: Yes.

JOHN M. MORRIS,

called as a witness by the defendants, having been previously duly sworn, was examined and testified further as follows:

CROSS EXAMINATION

BY MR. EISEN:

Q State your name for the record, please.

A John M. Morris.

Q You are, are you not, the same Mr. Morris who testified here yesterday?

A Yes.

Q You realize that the oath you took yesterday is still binding upon you?

A I do.

Q Mr. Morris, who proposed you for president of United Electric in 1959?

A Mr. Frank Nugent.

Q I believe you testified yesterday with regard to the merger talks between Truax-Traer and United Electric, do you recall that testimony?

A Yes, I do.

[257] Q When did these talks take place?

A I can't give you the exact date. It was around 1955, 1954, 1956, maybe a little later than that. That was the original or the first discussions that I recall.

MR. HEDLUND: Excuse me, your Honor. I am having a little difficulty hearing the witness.

THE COURT: Speak up so Mr. Hedlund and all parties can hear you.

THE WITNESS: Did you hear those dates I gave?

MR. HEDLUND: Yes.

THE COURT: You may proceed.

BY MR. EISEN:

Q You were involved in those discussions?

A Not at that time, no.

Q When did you become involved in the discussions?

A After I was made president and a committee was appointed by the Board of Directors to revive or continue the discussions, and again I am not clear as to the date of that, but it must have been about 1960 or 1961.

Q Who headed those discussions?

A Frank Nugent.

[258] Q Going back to 1955, who were the principals in the discussions at that time?

A Frank Kolbe from our company; and I forget who he was talking to at that time with Truax, but I think it was Mr. Harold Truax. But Kolbe was doing all the discussions on the first attempt from our company.

[259] Q Who were the principal shareholders of Truax-Traer at that time?

A I have no idea, Mr. Eisen.

Q When UEC was discussing a merger with Truax in 1955, UEC had not yet begun to acquire reserves in the Round Prairie of the Beaucoup Field, had they?

A No. That started, I believe, in 1956 or 1957 for Amalgamated, and then a year or two later we began to put together some lands adjacent to Amalgamated, called Round Prairie.

Q Did UEC at one time operate a coal mine in Indiana?

A Years ago, in about 1928, 1929, near Farmersburg, Indiana.

Q Do you recall the name of that mine?

A Farmersburg.

Q Is it a fact also that UEC operated a mine in, a deep mine, in Illinois in the 1920's?

A I would have no knowledge of that. Never heard of it.

Q You never heard of it?

A 1920?

Q In the 1920's.

A Never heard of it.

Q UEC has operated, has it not, over the last [260] 20

years coal mines in freight rate districts other than Belleville and Fulton-Peoria Freight Rate Districts, hasn't it?

A Yes, we have.

Q I believe you mentioned one yesterday, the Mary Moore Mine.

A That is correct.

Q Which was in the Danville Freight Rate District.

A That is correct.

Q What about the Freeburn Mine? Was that operated by United Electric?

A That was operated by United Electric and closed—oh, it's so long ago I can't tell you when, but it was in the Belleville District.

Q Did UEC have a mine at one time in the Rushville-Schuyler County area?

A We did.

Q Now what was the name of that mine?

A Rushville, I believe we called it. That closed a good many years ago, too.

Q About when would you say that closed?

A Oh, 20 years ago.

Q Did UEC also have a mine called the Skyline [261] Mine?

A Well, we put some machinery in there to work for the Island Creek Coal Company, where we were to strip the coal and truck it to their plant, and they did the processing, and they sold the coal. All our participation in it was uncovering it, and I believe we did truck it to the plant, which was—I don't know how far, but it was a few miles anyway.

So it wasn't what I would call a complete ownership or operation of a coal mine. We were doing part of the job, and they were doing the rest, and it was on their property, their coal leases.

[262] Q But it was leased property by you and you mined it, is that how it was? UEC mined it?

A We paid them a royalty for the coal. We mined it. They processed it. They charged us out of the selling price for processing and for selling and for royalty.

Q Has UEC from time to time or other strip coal operations or even other coal mines in general made

arrangements with other coal companies to lease property, and on a royalty basis, so much per ton, to mine and sell coal, the fee of which belongs to another coal company?

MR. HEDLUND: May I have that question read back, please.

THE COURT: Read the question.

(Question was read by the reporter.)

MR. HEDLUND: If Mr. Eisen is asking the witness for operations other than Skyline, I have no objection, but I am not quite clear on the thrust of the question.

BY MR. EISEN:

Q This was other than Skyline?

A I don't recall any. No.

Q Did you at one time buy some royalty coal and mine it from a company called the Morgan Coal Company? [263] A We leased that coal from them, which is adjacent to our Banner mine, and we have not mined it yet, but that was an outright lease from the Morgan Coal Company, just the same as any lease we would make with anybody, farmer or coal producer—not a coal producer, but a coal owner. This was a piece of coal that he couldn't mine himself, that he picked up some time ago, and it is right next door to our operations. But that will be handled through our own plant, just the same as any other coal we have down there. So that doesn't compare in any way with the situation over at the Skyline.

Q Have you attempted to enter into any arrangements with other coal companies similar to the Skyline arrangement since that time?

A We never had the opportunity.

Q I say, sir, have you attempted to?

A Not that I recall.

Q Or have you approached any other coal companies with that in mind?

A Not that I recall on that kind of basis, because the Skyline thing was such a disastrous failure, I don't think we would attempt it again.

[264] It was a disastrous failure for reasons other than the legal arrangement, isn't that right?

A It was a bad deal. That's all I can tell you.

Q Was that because of the particular mining situation or because of the financial arrangement or what?

A Mining conditions, No. 1. Island Creek taking too much of a bite out of the cherry, No. 2, which is the financial arrangement. And their unwillingness to properly assign enough business to that mine to keep it operating on a profitable basis. We abandoned it finally and sold the machine.

Q Mr. Morris, you recall yesterday that counsel showed you three letters from Mr. Kolbe to various parties with regard to the interest of United Electric or the absence of interest in going into underground mining?

A I recall the letters, yes.

Q In DX-220, Mr. Kolbe wrote:

"We are not interested in operating any coal mines except strip coal mines".

That letter was dated 1942. Do you recall that?

[265] A I don't recall it, no.

Q In 1954, the 1954 letter, which is DX-221, Mr. Kolbe wrote:

"Inasmuch as we confine our operations to strip mining, we would not be interested in this property."

Do you recall being asked about that yesterday?

A I was asked about it, yes.

Q In the 1956 letter does Mr. Kolbe state that UEC is not interested in deep mining, and for that purpose I am going to show you what has been received in evidence as Defendants' Exhibit 222.

A May I ask is that a different letter than I was shown yesterday or in addition to what I was shown?

Q This is the third letter.

A One of the same letters?

Q You were shown three letters, and this is the third one.

MR. HEDLUND: Is there a question pending?

MR. EISEN: I think there is.

THE COURT: Read the question.

Q (Read by the Reporter.)

MR. HEDLUND: Your Honor, I think the letter [266] speaks for itself.

BY THE WITNESS:

A It states what it is. Do you want me to read it?

BY MR. EISEN:

Q He doesn't say UEC is not interested in deep mining?

A He says we are not considering mining deep coal at the present time, which is not exactly what he said in the previous letters, but he didn't go into any kind of arrangement with these people or even consider it at that time.

* * * *

[270] Q Was it Kolbe's idea to use the Colmol at the Buffalo Creek Mine?

A Whatever was put down there in the way of attempting to mine additional coal or increase production was his idea. He was in charge then, and he was looking for ways to produce more coal out of that property. So, whatever was done, it was at his suggestion.

Q So that at least to that extent, Mr. Kolbe was interested in underground mining?

A To that extent, yes.

Q To the extent that Mr. Kolbe first arranged for the acquisition of the Beaucoup property, that would also be an expression of interest in underground mining, would it not?

A I wouldn't think so because that was done at the request of Amalgamated for long range planning considerably beyond even the life of Fidelity and other properties down there. So, it was done at the request of a customer.

Q Would you be surprised if Amalgamated stated that they planned to have that property mined in the 1970's?

A I have had no way, would have no way of [271] knowing anything about it because I haven't been around for the last four years. At the time I left, they did not indicate they were going to do anything very soon. I don't know what happened since then.

MR. HEDLUND: I am sorry to interrupt, your Hon-

or, but I am having a great deal of difficulty hearing Mr. Morris.

THE COURT: Would you speak up a little louder, Mr. Morris.

THE WITNESS: I am trying to speak as loud as I can.

THE COURT: All right. Maybe if you sit on the other side of the table you can hear better, Mr. Hedlund.

MR. HEDLUND: All right, your Honor.

BY MR. EISEN:

Q It is quite possible, is it not, that conditions have changed since you became inactive, and the feasibility of mining a property such as Beaucoup has become more appropriate?

A That I would have no way of knowing.

Q Following the closing of the Buffalo Creek Mine, United Electric retained the reserves at this mine, did it not?

[272] A The contract we had with Mr. Potter from whom we leased that coal—I will have to give you this from memory. I can't be too positive of it— but, I think the records will show, our leases will show, that if we abandoned and discontinued in there, anything that was left reverted to him. But, I would like to refresh my memory with the documents themselves, but I'm rather sure that the unmined coal, if any, unmined strip coal, reverted to—his company was called Kentucky Store & Land Company, I believe was the name of the corporation that we leased from.

MR. EISEN: Will counsel stipulate that the Buffalo Creek reserves were retained by United Electric until 1967, at which time defendants asked the Government permission to sell the Buffalo Creek reserves?

THE WITNESS: Mr. Eisen, may I answer—

MR. EISEN: No, there is no question, Mr. Morris.

THE WITNESS: All right.

MR. HEDLUND: May I have the request for stipulation read back, please?

MR. EISEN: That the—

MR. HEDLUND: Are you going to change it, Mr. Eisen?

. . . .

[301] Q Could you tell us the substance of the last conversation you had before going to Pittsburgh?

[302] A Yes, I can tell you.

Q Please do.

A I told Mr. Nugent, No. 1, that there was a possibility of maybe interesting Illinois Power in the mine mouth plant, and I had never met the Amalgamated people, I don't believe, up to that time, and I was going down there to see them and find out if they would let us dedicate some part of their reserves to a new coal mine for Illinois Power, which we would put with our Round Prairie Field and make a sizeable backlog for a coal mine, and also I undoubtedly in the conversation talked about Freeman doing the mining or Freeman loaning us the people to determine what the feasibility study would be, and that I was going to tell the Amalgamated people of Freeman's interest in our company.

That is as near as I can recall what was about the gist of the conversation.

Q This conversation would have had to have been when you were president of the company?

A Yes.

Q You became president in—

A '59.

Q In October of '59, is that correct?

[303] A Yes. November of '59, I believe.

Q In your conversation down at Amalgamated in Pittsburgh, you did not say anything to them about Freeman, did you?

A Yes, I did.

Q Do you recall that your deposition was taken on October 1, 1968 and you were questioned about these matters?

A Yes, I do.

[304] Q Do you recall what your testimony was with regard to whether or not you mentioned that Freeman was connected with the possible utilization of those reserves for Illinois Power?

A I don't remember specifically what I said at that time in that deposition, no.

Q Do you think maybe you didn't recall it at the time on that deposition but now it comes to mind?

MR. HEDLUND: I object. I think Mr. Eisen is arguing with the witness. If he wants to call attention to a particular—

THE COURT: The objection is sustained. Cite the deposition.

BY MR. EISEN:

Q I would like to refer you, Mr. Morris, for the purpose of refreshing your recollection, and with the permission of the Court I will not read the testimony but will hand it to the witness, because it is about a page and a half—

THE COURT: Indicate the page.

BY MR. EISEN:

Q Beginning at the bottom of page 266 and onto page 267.

See if that refreshes your recollection as [305] to the subjects that were mentioned at that Pittsburgh meeting.

MR. HEDLUND: Is there a question pending?

THE COURT: He just asked him to read.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY THE WITNESS:

A That is about the way I have stated it here.

MR. HEDLUND: I don't believe there is a question pending.

MR. EISEN: I asked him if it refreshed his recollection.

THE COURT: There was no question pending.

Do you have a question now?

BY MR. EISEN:

Q Does that refresh your recollection, Mr. Morris, as to whether or not you told Mr. Miller, I believe was his name, at Amalgamated that it would be Freeman who would be utilizing or who would develop those reserves?

A At the time you took my deposition you did not ask me whether I did that or not, and I didn't state it

in that answer. You are now asking me if I told him, [306] and I am quite sure I did, because I told everybody I was discussing any underground proposition with that we would have to utilize the ability and knowledge of Freeman, with whom we were closely associated, if we went into any underground mining.

.

[308] Q Is it possible that you began your conversations with Mr. Kraakevich of Illinois Power with regard to their planning a mine-mouth Plant in the Beaucoup area as late as 1963?

A I think it was earlier than that. But the records, again, are the best positive answer to that question.

Q What record are you referring to now, sir?

A Letters that we wrote to Mr. Kraakevich about the project principally. But let me say this: [309] before we got into it very thoroughly with him or very seriously, they made their decision to build a plant, an extra unit, I mean, at Wood River, and this whole proposition just was stopped or fell of its own weight. It wasn't pursued any further.

[310] Q Are you positive, Mr. Morris, that the conversation with Mr. Kraakevich in 1959 was where you proposed to supply coal to Illinois Power for a mine-mouth generating plant to be operated by Freeman?

A I can't tell you the exact date or year. I have given it to you as closely as I remember it, and that is the best I can do.

Q Isn't it a fact that in your initial conversation with Mr. Kraakevich you didn't mention Freeman?

A I am quite sure I mentioned Freeman soon after I became president, which is the time they came on the Board.

Q Isn't it a fact, Mr. Morris, that from 1955 to 1959 you called on Mr. Kraakevich on numerous occasions?

A That is correct.

Q Isn't it also true that you told Mr. Kraakevich during this period that Freeman had nothing at all to do with United Electric?

A I did not tell him that, because it was a matter of public information that they had a sizable interest in our

company, and I certainly wouldn't deny that they didn't have a financial interest. So far as having anyone on the Board prior to 1959, that was a [311] matter of public record, too. But I don't know what I told him in 1955 to 1959.

.

[314] BY MR. EISEN:

Q Showing you what has ben identified as GX-107 for identification, Mr. Morris, can you tell us approximately how much coal is underlain in what is known as the Round Prairie Field, based on the checkerboarding as previously described?

A I would like to know, if you will tell me, from your records there, what our engineering reports showed that we carried at the end of 1966 or 1965, whenever you have it there. I think it was around 50 million, but I am not sure. I would like to have that, though, if I am permitted to have it, your Honor.

BY MR. EISEN:

Q Would that help you?

A That would help me. This map is December 31, 1966.

MR. HEDLUND: I have the record here, your Honor.

THE COURT: All right.

BY THE WITNESS:

A I don't need to look at it. All I need to know is the figures.

MR. HEDLUND: Here it is (tendering document).

THE COURT: Mr. Eisen, what is the purpose of [315] this examination if it is all a matter of record?

MR. EISEN: It is not a matter of record, your Honor. My next question will indicate to the Court why it is not a matter of record.

THE COURT: All right.

[316] BY THE WITNESS:

A I think I am prepared to answer the question now. That record showed a total of 43 million tons as of December 31, 1966, covered by these colored portions of this map, which is checkerboarded and which is fairly solid in the central part.

On the basis of that, my best estimate would be there is another 40 or 50 million tons in that area, maybe 80 or 90 million tons total in this area that we were working.

Q As referred to on GX-107 for identification?

A Is that what that is?

Q Yes.

A Yes.

MR. EISEN: The Government offers into evidence GX-107 for identification.

THE COURT: Is there any objection?

MR. HEDLUND: Your Honor, this is the first time I have ever seen this map, recently.

THE COURT: Was that submitted to the defendants before?

MR. HEDLUND: It was not.

MR. EISEN: It was not, and I have to apologize, [317] your Honor. Of course, it is their map. I have to apologize. I didn't plan really to use this today. As I was coming into the courtroom, I saw Mr. Cusack had a copy of it. So I apologize. I gave them a list of everything I thought I would use.

THE COURT: All right.

MR. HEDLUND: Your Honor, I have no particular objection.

THE COURT: It may be admitted.

(Whereupon, GX-107 was received into evidence.)

BY MR. EISEN:

Q Would you explain, Mr. Morris, what is meant by the expression, "control by location"?

A Yes. That means you have a block of coal in one particular area. Anything close by or surrounding it or within a reasonable distance, if you have a fairly good block, would mean you would undoubtedly be the best qualified to take up the rest of it and put it into a sufficient tonnage set-up to justify a coal mine.

Q This is a practice of coal companies generally?

A It is.

Q Or at least some coal companies?

A That is correct, yes.

[318] Q And it was on that basis that you answered the prior question that I put to you with regard to GX-107?

A That is correct, yes.

Q So that the 40 million tons remaining in the area would be controlled by location?

A I think so, yes.

MR. EISEN: I am getting into another subject, your Honor.

* * * *

[320]

AFTERNOON SESSION 2:00 P.M.

* * * *

LOUIS R. TOMEY,

called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

[321]

DIRECT EXAMINATION

BY MR. KEMPF:

Q Please state your name and address, sir.

A Louis R. Tomey, 838 Warwick Lane, Glendale, Missouri.

THE COURT: Will you spell your last name.

THE WITNESS: T-o-m-e-y.

THE COURT: Thank you.

That is not an amplifier, sir. It is merely for the tape recorder so it will not help your voice. Keep your voice up so all counsel can hear you.

THE WITNESS: Thank you, sir.

THE COURT: Thank you.

BY MR. KEMPF:

Q By whom are you employed, Mr. Tomey?

A Union Electric Company.

Q What is your business address?

A 1901 Gratiot Street, St. Louis, Missouri.

Q What position do you hold with Union Electric?

A I'm responsible for the purchasing program, the motor transportation section, the stores section and the building service, and the title is Superintendent of Supply Service.

[322] **Q** How long have you been with Union Electric Company, Mr. Tomey?

A 33 years, and during that time I've had a number of jobs with the company, and assumed the job as purchasing agent in '59 and the present job in '66.

Q While you have been with Union Electric, have you personally been involved in the purchasing of the company's coal requirements?

A I have, and, in fact, I have been involved in their coal program since about 1949.

Q I am sorry.

THE COURT: What year?

THE WITNESS: 1949.

THE COURT: All right. Thank you.

BY MR. KEMPF:

Q I would like to show you what has been received in evidence as Defendants' Exhibit 144, a map entitled "Investor-Owned Electric Utility Service Areas." Could you show us on this map here the service areas of Union Electric Company. Preliminarily, where are those service areas generally located?

A Well, we serve the northern portion of Missouri, and through our subsidiaries, it goes to Iowa and comes down to St. Louis and then over out into the state [323] as far as Jefferson City and the central area of Missouri.

Q Could you show us specifically on the map the service areas served by Union Electric Company and its subsidiaries?

A The Union Electric has the 151 area, the subsidiary 90 is Missouri, is our Missouri Edison, I believe, and 91 is the Missouri Power & Light area. It's the brown area.

Q By the numbers, you are referring to the numbers on Defendants' Exhibit 144?

A Yes. The color, I guess this is bronze and the dark brown there.

MR. KEMPF: Thank you.

BY MR. KEMPF:

Q Could you describe briefly the electrical generating facilities which Union Electric operates, Mr. Tomey.

A We have, upon the completion of our Labadie Plant, which is now under construction, and the last or the fourth unit will go in service in 1973, we will have then seven steam plants. We have two internal combustion engine plants, two hydroelectric plants and a pumped hydro plant.

[324] Q What is the approximate electrical generating capability of your company upon the completion of the Labadie Plant you referred to?

A Approximately 6 million kilowatts.

[325] Q What fuel is used by Union Electric at its two internal combustion engine plants?

A One plant uses natural gas, and one plant uses oil.

Q What fuel is used by Union Electric at its seven steam power plants?

A Principally coal is used at our steam plants. However, in recent years we have started using considerable amounts of oil and natural gas during the summer time when we are able to obtain interruptible gas.

Q Why is that?

A Well, with the air pollution regulations such that we are having to burn more and more gas during the summer time, and at our Cahokia plant we have gone to oil for the same reason, to eliminate the fly ash from the stacks.

Q Do you have under consideration at the present time any increased use of either oil or gas?

A I am sure as the air pollution regulations become more stringent, we will have to go further into oil at our plants that are in the immediate vicinity of the St. Louis area.

[326] Q Does Union Electric operate any nuclear powered generating stations?

A No, we do not at the present time. However, we have been abreast of the developments in nuclear, but at the present time we do not operate—we do not have a nuclear contract.

Q Do you anticipate the possibility of any nuclear plants in the future?

A Well, I would think by the end of this decade we probably would be in that position, yes.

Q I now hand you Defendants' Exhibit 146, a 1966 annual report of Union Electric Company. I would like to refer you to page 8 thereof.

A This annual report, of course, calls attention to our—

THE COURT: I don't believe we have a question pending.

BY MR. KEMPF:

Q My question is: I think this traces, does it not, the nuclear interest of Union Electric through the years starting the bottom of the first column on page 8?

A Among other things, yes, it covers our annual reports analysis of what we have done in nuclear energy. And it indicates about what I said a while ago, the fact [327] that we have tried to stay abreast of the nuclear developments. This goes back clear to 1951, when we went, together with Monsanto Chemical, in this nuclear power group, and it ended up with an initial 200,000 kilowatt station at Dresden, and we are continuing to stay in touch with the nuclear situation. But, for us, it hasn't become economical as yet.

Q Mr. Tomey, I now would like to show you what has been received into evidence as Defendants' Exhibit 147, the 1967 annual report of Union Electric Company, and I would like to refer you to page 13 thereof.

The last paragraph on the right-hand column again refers, does it not, to Union Electric's interest in nuclear power?

A Yes.

MR. FUTTERMAN: Your Honor, if I may, I should like to object to that question on the ground that the document speaks for itself.

THE COURT: Well, I assume the witness is not going to read the document. We will hear what he has to say. I will consider a motion to strike if necessary.

BY THE WITNESS:

A Well, it just indicates further our staying abreast. The fact of the matter is we engaged, as this [328] report says, NUS to make a study for us back in 1966, and it just substantiates our still staying with coal when this decision was made.

[329] Q I would now like to show you Defendants' Exhibit 148, the 1968 annual report of Union Electric Company, and I refer you to page 6 thereof.

Again looking at page 6 of the 1968 annual report, this particular portion of the annual report traces, does it not, the Union Electric interest in nuclear power?

A Yes, it does. It reports to our stockholders that we now have gone in with several other utilities, with Gulf General Atomic, on the development of a fast breeder reactor, and a continuing of our efforts to stay abreast of the nuclear field.

Q Mr. Tomey, I now would like to show you Government Exhibits 88 through 90 and 96, and I would ask the Government to provide the Court with a copy of these items.

I will ask you to turn to page—it is not numbered, but it is the third page in on Government Exhibit 88. That page has as the third entry in the far left-hand column "Union Electric Company, St. Louis, Missouri." Do you see that? The third page in.

A Yes. The third customer down?

Q The third customer down.

[330] A Yes, sir.

Q If you will take Government Exhibit 89, the last page, the top customer listed is Union Electric Company, St. Louis, Missouri. My copy of this is somewhat blurred, but I think the Government will stipulate that is "Union Electric Company".

MR. FUTTERMAN: We so stipulate.

BY MR. KEMPF:

Q On Government Exhibit 90, again the final page, the top customer, as it is shown on mine, it agains refers to Union Electric, and if you will look at Government Exhibit 96, it likewise reflects shipments to the Meramec and Venice Stations of Union Electric by Freeman and United Electric.

All of these exhibits indicate that you have in the past bought coal for your Venice and Meramec facilities from both Freeman and United Electric.

If Freeman and United Electric were independent companies, would they compete against each other for the business of those facilities?

A Well, the coal under these contracts is different. The Freeman contract is dust coal, and the United coal is screenings. Really it is not a competitive situation there.

[331] Q Why is that?

A Well, the dust is a byproduct of the metallurgical field, and there is only a limited amount of that available, and we have been able to utilize that in our boilers due to the economics of the situation, and we can only use about 50 percent of it, however, in our boilers and we have to mix it with the screenings. So, you are really not talking about two competitive situations here. One is on the screenings and one is on the dust.

Q Why is it that the dust is not able to compete with the screenings at these particular facilities of Union Electric?

A Well, the plants are located on the Mississippi River, which is right adjacent to the Belleville coal fields, and whereby the dust shipments are coming from the Southern Illinois fields, and there is quite a rail haul into there, and, unless the price of the dust is—and that is one of the things that makes it attractive. The price is low enough so that it could compete with the screenings for those particular—that particular fuel, or it made it attractive up to a certain portion, whatever you can burn.

Q For the portion that you burn of dust, who [332] competes for that business?

A Well, the metallurgical people, the people who have metallurgical coal, I should say, in the Southern Illinois fields, that produce offal or the byproduct of the metallurgical coal, which is the dust.

Q Who competes for the screenings portions of these plants' requirements to which you referred?

A The people who are mining in the Belleville district, the major mining concerns in the Belleville coal fields are competing for that business.

Q Is this true of all of your plants?

A No, it's not true of all of our plants. The Sioux Plant is on the Q Railroad, and that generates considerable—they service a lot of mines in Southern Illinois fields, and that puts a competitive situation as far as our Sioux Plant is concerned with the southern producers, Southern Illinois producers, and the Belleville people are a little—we don't even have barge facilities in our Sioux Plant, and that would be their competitive situation, by going into the Sioux Plant by barge.

As far as the other plants, the air pollution is making it such that we are going to have to shift some [333] of our plants that are nearest St. Louis from the Belleville fields into low sulphur producers, and low sulphur coal, which will make the Belleville people less and less attractive, Belleville coal, less and less attractive, at those plants.

Q What procedures are followed by Union Electric in purchasing coal for its facilities?

A Well, more and more of our coal is getting into long-term contracts. The fact of the matter, about 90 percent of our coal is under long-term contracts right at the present time.

[334] Q Of how long a duration would the Union Electric contracts be?

A Our contracts for long-term coal have been tied with the new plants and, of course, with the large outlay of money for a new plant, you want to assure yourself of a pretty solid coal supply for certainly the most productive years of that plant, which would be 15 to 20 years with options to renew for possibly another ten.

So, our long-term contracts are running between 10 and 15 years with options to renew.

Q Are there any other factors that enter into the length of these contracts?

A Well, yes, there is a factor such as the efficiency of your equipment. If you are assured of a long-term supply of coal with one type of coal, you can increase, you can design your boiler more closely for that particular fuel which, in turn, increases its efficiency, and over the most productive years of the plant it is quite advantageous to have such a long-term supply.

Q How wide a range in the specifications governing coal which is acceptable for use in your boilers does Union Electric have, Mr. Tomey?

[335] A That varies from plant to plant there. Most of the older plants have a wider variation in their boilers than the newer plants, and our cyclone boilers particularly have a very narrow range, at our Sioux Plant have a very narrow range, and the Merrimac and Venice Plants are able to use a wider range of coal. So, I would say that varies with the plant.

Q Would Union Electric be able to use coal from the Fulton-Peoria area in its boilers?

A Well, we've never had to face that one because the freight in there would make them real non-competitive as far as we are concerned from that area into St. Louis, and we have never had to face that. But, I assume that coal has a different ash characteristic, which I believe is higher than ours, and also the moisture, and that would certainly, on our boilers could certainly wreck their efficiency and could cause them to slag up and maybe even shut them down if you had the type—if it got too severe.

Q Apart from coal specifications, what other factors does Union Electric look to when considering potential coal suppliers, Mr. Tomey?

A Well, certainly you have to have a company that has large reserves in order to participate, and [336] to participate in a company that has large generating units, and the sound financial condition of a company would be a consideration, and I would say also a very im-

portant one would be experience, their experience in the field of actual mining.

Q Why are adequate coal reserves a factor?

A Well, there again it goes back to your outlaying—you are putting out three or four hundred million dollars for a plant, and you want to be assured of solid supply of fuel for that particular plant, and so reserves become very, very important.

[337] Q Do you inquire directly of this of the coal producers when you begin negotiations with them?

A Well, our letter of invitation to bid, that's one of the things that brings out what are the reserves that you have available for dedication to this contract. Also, the characteristics of the coal along with where the site is going to be and the mine site, what railroad it serves and its capacity. So, all those are part and parcel of negotiating a coal contract, and that's a very important one.

Q Do you have any minimum number of tons which you consider essential for dedication to a facility if a coal producer is to bid on one of your coal contracts?

A Well, that, of course, is tied to the size of the unit and, of course, our units have been sized for the past, I guess, 10 years, or the coal contracts since about the middle of 1960 have been running between 1.5 to almost 2 million tons a year per unit, so if you can multiply the arithmetic out, you get some place between 30 and 40 million tons of reserve required for a couple of units that you would be contracting for.

Q What about these other factors you mentioned? I think you mentioned the financial foundation and their past performance I think you referred to. Why are those [338] important factors?

A Well, I guess it all goes back to the same situation. You are into a large project and you want to know that the people you sign a contract with are able to produce on their end of it, and that takes substantial amounts of money to open up a coal mine, and you have to have a—your contract has to be with people who are substantially able to handle such a financial undertaking.

Q Is the number of coal companies serving Union

Electric with good financial and management teams greater, smaller or about the same as it was when you first became active in coal purchasing?

A Well, it appears to me that we have a lot of people still interested in our business, and I would say that there is still considerable competition in our business, and I can't see a great deal of diminution in it, really.

[339] Q My question is as to the number of people who combine these factors that you refer to, the good financial background and good management team, just in terms of the number of people who are now serving Union Electric. Are there more or less or about the same as when you first became active—

MR. FUTTERMAN: I object to the question on the ground it is leading.

THE COURT: Objection overruled. You may answer.

BY THE WITNESS:

A I would say it would appear to me about the same. We will still have considerable numbers of people interested in our business.

BY MR. KEMPF:

Q With the companies to which you are referring, how important to you is their flexibility in fulfilling their contract requirements, if at all?

A I would say it is extremely important to have flexibility in the coal supply. As a case in point—

Q What is that?

A Just recently, when one of our large suppliers had a disaster, a plant actually having a million ton contract to our plant went out of service. It was [340] going to be out of service initially for three months. That was the indication. A lot of herculean effort went into it on their part, and they were able to get it back in six weeks. But during that period of time they were able to supply coal to us from another mine that they were operating. It certainly helped out a great deal as far as our supply was concerned.

Q Now you also referred to this factor of reliability

of service, Mr. Tomey. Suppose a company like United Electric, standing alone and without affiliation with Freeman, were to come in and tell you that they would like to submit a bid on a particular plant of yours to be serviced by an underground mine which they proposed to open. What would your reaction be?

A They would be at a considerable competitive advantage opening up an underground mine from an experience level, unless they made you an offer that would just be untenable or just couldn't be passed up. Unless you were willing to take such a risk. That certainly is not one that I would want to recommend that you take. However, you certainly would have to look at it very, very carefully before you would just immediately jump into a long-term contract with someone [341] that is just getting initially into the business, who had no experience in that type of mining.

[342] Q I am not sure I heard something you said in the beginning. Did you say that they would be at a competitive advantage or disadvantage?

A I said they would be at a great competitive disadvantage. Maybe I did say "advantage."

Q Does the electricity which is generated by Union Electric face competition in its end uses from other fuels?

A It sure does. We have considerable competition from the gas industry, particularly now with the total energy concept just being promoted and developed in the gas industry. In fact, here again, another case I could cite—the largest office building which just opened in St. Louis recently—and I am talking about very recently—is a total energy building. The illumination as well as all the facilities are generated on site. That is the third unit we have in the St. Louis area presently. So we have plenty of competition from the gas industry. And, of course, you are in competition for electric heat for heating with the oil industry.

Q What effect, if any, does the common ownership of Freeman and United Electric by General Dynamics have on competition for the business of Union Electric Company?

[343] A I haven't noted any particular disadvantage at the present time or since they have been operating together. The fact of the matter is there could be, I would think, some advantages by having larger reserves, that they would be able to fill out some longer term contracts with maybe Freeman's reserves, United Electric being a reserve short company.

MR. KEMPF: I have no further questions at the present time.

THE COURT: You may cross examine.

[344] CROSS EXAMINATION

BY MR. FUTTERMAN:

Q Mr. Tomey, isn't it a fact that Union Electric can purchase only interruptible gas?

A In large quantities, that is correct.

Q And the interruptible gas which Union Electric purchases is only available from about May to October, is that correct?

A April 1 to October 1, yes, sir.

Q Why is interruptible gas unavailable November to about April 1st?

A I guess it has to do with the pipeline capacity into St. Louis, and the fact that it is being utilized by the heating customer, the home heating customer, and for industrial heating in the area.

Q Isn't it a fact that the gas company can sell gas in the home heating market at a greater profit than it can realize on sales of interruptible gas to electric utilities?

A The price is higher, yes. I don't know about their net.

Q Mr. Tomey, isn't it a fact that the cost of interruptible gas to Union Electric has increased from about 18½ cents to 30 cents per million BTU [345] during the past few years?

A As to "few years", I would like very much to put a number on that "few". I think it is over the past eight, nine years. If that is "few", you are entirely correct.

Q And the current cost of coal to Union Electric per million BTU is about 24 cents, is that correct?

A I believe our over-all average is around 24 cents presently. That is correct.

Q Is firm rate gas available to Union Electric in sufficient quantities to generate electricity for all of its stations?

A No.

Q If firm rate gas were available to Union Electric, it would cost about 50 cents per million BTU, would it not?

A We are buying some gas beyond the interruptible for boiler start-up over a short period of time, and this is around 50 cents, yes, sir.

Q Would you please explain what "boiler start-up" means?

A When you start a boiler up being cold, you have to bring it up to a certain temperature in order [346] to sustain the combustion of pulverized fuel, or coal, in the boiler. So they bring this up with gas, and you get the boiler heated internally with gas and also keep the gas flame on until you have continuous combustion inside the furnace with the pulverized fuel or the ground-up fuel like you use in a cyclone boiler.

[347] Q At the point where you would bring the boiler to the desired temperature, would you then cease to use gas?

A Correct. That is correct. I might say that we do, when gas is not available, do that with propane gas now. We have propane facilities for doing that same thing. But we prefer natural gas, if we can get it, because it is more economical than propane.

Q How much does the propane gas cost on a per million BTU basis?

A About \$1.25 per million BTU.

Q Is it a fair statement, then, that when you are using the natural gas or the propane gas to start the boiler, you are not using that gas for purposes of generating electricity?

A That is correct.

A At the present time, Mr. Tomey, gas consumption

accounts for approximately 8 percent of Union Electric's total fuel consumption, does it not?

A At the present time—I cannot answer that precisely as to percentage. I know that it is increasing due to the fact that we are having to burn more gas due to an air pollution condition in the plants contiguous to the St. Louis area. We have increased last summer our [348] gas consumption, and this year we still plan to increase it even further.

* * *

[355] Q Is it a fact, then, that oil is not price competitive with coal for purposes of generating electricity within the Union Electric system?

A That's right. There are other considerations than price in a situation like that.

Q I believe you testified on direct examination that Union Electric has no nuclear plants at the present time?

A That's correct, yes.

Q Do you have any plans at the present time to construct any nuclear plants?

A No, we do not have.

Q Is it not a fact that Union Electric's next plant expansion will involve coal-fired units?

A The generation that we have bought for 1975 and '76 in-service dates contemplates using coal, that's correct. The steam generation equipment has not been purchased, however, for that equipment.

Q Do you have any idea how long it would take to build a nuclear plant?

A Well, according to the records, it must be running about eight years now. The track records of [356] some of these people might be even longer than that. But, I guess if everything worked just right, you could probably do it in less time than that, but there seems to be licensing and permits and things of that nature that contemplates a longer time than a fossil fuel plant.

Q How long would it take to build a fossil fuel plant?

A Well, we're contemplating starting construction next year on this site. That's early '71, and we expect that unit to go in service in January 1, of 1975.

Q So, it would take about four years?

A Roughly four years to open up the site. Now, if you don't open up a new site, it could take less than that, but this is starting from scratch on a new one, and I'd say between four and five years is about what our record has been over the last three plants, three major plants.

Q Has your continued interest in the developments in the nuclear power field made you aware of the fact that there have been delays in the construction of nuclear power plants?

MR. KEMPF: I am sorry, your Honor. I could not [357] hear the question.

THE COURT: Will you read the question, please.

Q (Read by the Reporter.)

THE COURT: Will you speak up a little louder, Mr. Futterman.

MR. FUTTERMAN: Yes, your Honor.

BY THE WITNESS:

A Oh, I think anybody that reads the technical journals and the papers, you are made aware that there has been a large number of delays in the nuclear field, that's correct.

Q There have been other problems, such as thermal pollution involved with the construction of nuclear plants, have there not?

A Oh, I believe there has been some argument with the conservation people and the regulatory people about increasing the temperature of the water unduly, yes. I believe that's correct.

[358] Q Mr. Tomey, approximately how much money will be expended for the generating units to come on line in 1975 and 1976?

A I would say, and you have to take a real—I would want it to be a real wild guess because of the fact that with all the increases in cost that we are experiencing and have experienced for the last years, that it would be somewhere around 200 or 225 million dollars.

Q Do you have any idea of what the approximate cost would be for nuclear size units of equivalent size?

A I do not, I do not.

Q Is it not a fact, Mr. Tomey, that the plants which will come on line in 1975 and 1976, the coal-fired plants, will incorporate some kind of a sulphur dioxide emission control system?

A I don't believe that's established at this particular time for the reason that right now there is no commercially available sulphur removal system on the market, and our company, as you well know, has expended some in excess of 1.5 million dollars on an experimental unit, and right now that's not commercially operable, and we cannot say with any certainty that a sulphur removal system will be available.

I will say this, that anything that we construct will comply with the air regulations. Whether it is utilizing low sulphur oil, low sulphur coal, why, that has yet to be determined.

Q The air pollution technique that you just spoke of, that is the Combustion Engineering limestone injection wet scrubbing sulphur dioxide control system, is it not?

A That's the one we have an experimental installation on, yes, sir.

Q As I understand it, you have expended in excess of a million dollars on that particular system?

A That's correct. That's right.

Q You are continuing to experiment with that system?

A That is correct.

MR. FUTTERMAN: Excuse me one minute, your Honor.

THE COURT: Certainly.

(There was a short interruption, after which the following further proceedings were had herein to-wit:)

BY MR. FUTTERMAN:

Q Mr. Tomey, in your opinion, do you expect that there will be a commercial sulphur dioxide emission [360] control system available by 1975 and 1976?

A My personal opinion is there will not be.

Q What is that opinion based on?

A Our experience with the one that we have, and

the experience with the others—the stage of the art with the other sulphur removal systems that are being worked on around the country.

Q Have you on occasion consulted with any of the officials of the Kansas Power & Light Company?

A Our people have looked over that installation, yes.

Q You know that the Kansas Power & Light Company is constructing a 430 megawatt plant which will incorporate the Combustion Engineering SO₂ removal system, is that correct?

A I was not aware of that, myself, personally. I was not aware of that, no.

Q Mr. Tomey, is it not a fact that at the present time nuclear energy is not cost competitive with coal for the purposes of generating electricity within the Union Electric system?

A The analysis that was made by NUS as alluded to in our annual report indicated that it was not economically at that particular time.

. . . .

[367] BY MR. FUTTERMAN:

Q Is it a fair statement, Mr. Tomey, that a boiler can be designed to burn a variety of coals?

A Well, if you're willing to accept the degradation in efficiency and the increase in the cost.

Q This range can include both raw and washed coals, is that correct?

A If you are willing to accept those parameters, yes.

Q You testified, I believe, on direct examination that Union Electric has not ever purchased Fulton County coal. Is this because you can satisfy your requirements from the Belleville and Southern districts within Illinois?

A Well, as I believe I stated in that, due to the economics we had never had to face that problem, and because those coals from those areas were not offered to us at a competitive price.

. . . .

[370] BY MR. FUTTERMAN:

Q But there were occasions where you did not receive the full tonnage specified—

A To answer your question directly, yes, you are correct.

Q In order to make up that difference, you had to go out and purchase coal from another source, is that correct?

A We went into our inventory situation and depleted considerably our inventory of coal, yes.

Q How did you replenish the inventory that you had depleted?

A Well, it is being replaced now. When the up river movements are ceased, then we are able to replenish our inventory somewhat.

Q Aren't there occasions when you have to go out into the spot market and purchase coal?

A Oh, yes, sure.

Q Will you explain what the spot market for coal purchases is?

A What we term a spot market is something that is not covered on a long term contract. We have contracts of 10, 15-years duration, and we have coal on a yearly basis. Our tendency is to call the coal on a yearly basis somewhat of a spot market. Also I guess [371] some people would classify as a spot market whenever you want coal next week and somebody has 10,000 tons or 50,000 tons that they can sell you on a month basis. But our tendency is to call a spot market anything that is not covered on a long-term contract.

Q When these occasions arise, specifically the one you just mentioned, from time to time does the coal originate from different producers, different locations?

A Sure. Outside your regular producers. But it is usually in your normal area, with the people who are those you may not be doing business with at that particular time, who would have the coal available, but it is in your area, the area you normally would be operating in.

Q Mr. Tomey, isn't it a fact that Union Electric

invited UEC to bid on the contracts for the Labadie 1 and 2 units?

A I do not know. I cannot answer that directly, because I did not purchase the coal for the 1 and 2 units, and I did not review that file before coming here today. I do know they did not ask them to bid on 3 and 4 units.

Q Isn't that because UEC told Union Electric [372] that it did not have the reserves to bid on the 1 and 2 units?

A It was my understanding that they told Union Electric that they did not have the coal reserves to bid on that plant, that is correct. The fact of the matter is it was my impression that they told them that on the Sioux units 1 and 2.

Q When did United Electric tell Union Electric that they did not have sufficient reserves to bid on these coal generating stations?

A I assume that was in 1962 or 1963, somewhere around there, I guess.

[373] Q Who got the contract to supply the Sioux Plant?

A The Sioux Plant?

Q Yes.

A Well, Old Ben Coal Company got the unit, the first unit, and then the second unit for Sioux is covered partially by Old Ben and partially by Freeman Coal Company.

Q Mr. Tomey, did United Electric ever offer to supply coal to Union Electric from the McDonough-Schuyler County area?

A You would have to identify those areas for me. I am not that well acquainted with the area to know. The only mine that I have been offered coal from for United Electric was out of the area of their Fidelity Mine. Is that in those counties? I think it is not, but it could be. I don't know.

Q The McDonough-Schuyler County area depicted in Nugent Deposition Exhibit 38, which has been received in evidence, is over in this general vicinity (indicating).

A They did not offer it to me, no.

Q Has United Electric ever offered to supply coal to

Union Electric from other reserves in the [374] Perry County area—that is, reserves other than those associated with the Fidelity Mine?

A We have a contract now at our Meramec Plant for United Electric there and Consolidated Coal, the old Truax-Traer company, participated in the contract. It is almost eight or nine hundred thousand tons a year, which United Electric, I believe, has around 250,000 of. That contract runs out next year. We have extended the United Electric portion of that, and they have offered to cover the latter part of the ten-year contract by other reserves of other areas.

Q What areas are those?

A It is contiguous to their present field there at Fidelity, which I assume is some of Freeman's reserves.

Q Has United Electric ever offered to supply Union Electric with coal from virgin reserves in the Perry County area?

A Not to my knowledge.

[375] Q Mr. Tomey, isn't it a fact that the new Federal Mine Safety legislation will increase operating costs of deep mines?

MR. KEMPF: I am going to object to this, your Honor. This is outside the scope of my direct examination. I did not go into the cost of the mining operations of underground mines.

THE COURT: What is the purpose of this? I do not recall anything about mining costs.

MR. FUTTERMAN: I will withdraw that question.

THE COURT: How much longer is your cross examination? I am not attempting to cut you off.

MR. FUTTERMAN: Your Honor, this is the first witness I have ever examined in a courtroom, and it is very difficult for me to estimate how long it will be. I would estimate, however, that I have a good hour left with this witness.

THE COURT: All right. We will take a five-minute recess. You are doing very well.

(There was a short recess, after which the following further proceedings were had herein, to-wit:)

THE COURT: Are you ready to proceed?

MR. FUTTERMAN: Yes, your Honor.

[376] THE COURT: You may.

BY MR. FUTTERMAN:

Q Mr. Tomey, isn't it a fact that the price of dust is determined by its BTU content?

A Well, initially I think it was determined by the competitive market situation for—oh, I would say from a relative standpoint, yes. If a dust has the same as high BTU's, why, it would command more of a price than a low BTU dust. So I would say from that standpoint, yes.

Q Isn't it also true, sir, that the cost of other sizes also is determined according to their BTU content?

A That is not the only factor, but you usually adjust a contract based on moisture and ash—on BTU content.

Q Is BTU more important for purposes of this adjustment than moisture and ash?

A Well, usually the moisture and the BTU are the primary ones you work with.

Q And the dust which is consumed at coal consuming facilities originates in coal mines, does it not?

A It originates in coal mines, yes.

Q And dust is shipped from the mine to the [377] consumer via barge and rail lines, is that correct?

A Are you talking about dust?

Q Yes.

A It is transported from the mine to the plant by rail cars or barges, you say?

Q It can be transported by both methods of transportation. Is that not correct?

A Yes.

[378] Q And coals of other sizes are shipped from the mine to the consumer via barge and rail lines, are they not?

A Yes.

Q And both dust and screenings are used for purposes of generating electricity by electric utilities, are they not?

A Yes.

Q Is it not also true that dust and screenings are consumed in the same boiler facilities?

A Yes.

Q Assuming that an electric utility has a pulverizer on its boiler, all of the coal which goes into that boiler after it is pulverized is in a dust state, is it not?

A Yes, sir.

Q So that if dust and other coal sizes are consumed in the same boiler facility and that boiler facility has a pulverizer, both the dust and the pulverized coal go into the unit in the same form, do they not?

A If the dust initially was at the same consistency as the dust that you bought, yes.

Q Isn't it true, Mr. Tomey, that most utilities [379] have pulverizers attached to their boilers?

A Pulverized fuel boilers do. Cyclone boilers do not.

Q Do Union Electric's boilers have pulverizers, its non-cyclone boilers? Let me rephrase that.

Do the Union Electric boilers which are not cyclone boilers have pulverizers on them?

A The ones using coal, yes.

Q Mr. Tomey, isn't it true that the price paid by Union Electric to individual suppliers varies according to the BTU content of the coal produced by each of those suppliers?

MR. KEMPF: I would like some clarification—I will object on the basis that Mr. Futterman should explain whether he is talking about delivered price, f.o.b. price, or what-have-you.

THE COURT: Rephrase your question.

BY MR. FUTTERMAN:

Q Isn't it true that the delivered price of coal on a BTU basis to any particular station may vary depending on which supplier has shipped that coal?

A The prices of coal to our various plants differ with suppliers, yes. They are not all the same, if I understand the question correctly.

[380] Q With a particular generating facility you would not pay the exact same price for every ton of coal you receive?

A That's correct.

Q And if we were to eliminate the transportation charge involved and just consider for the present purposes the f.o.b. mine price, the price of coal would vary from supplier to supplier, would it not?

A Oh, sure.

Q Mr. Tomey, the Meramec and Venice Plants have pulverizers, do they not?

A Yes, sir.

Q If you were not buying dust for the Meramec Plant, you would have to make up that difference for purposes of the coal needed to generate electricity, in other coal sizes, would you not?

A Other coal sizes?

Q Yes.

A Correct.

Q Mr. Tomey, I again hand you Government Exhibit 96, which you were discussing on your direct examination. Were you in charge of preparing the information which was furnished in that letter?

A Yes.

* * * *

[386] BY MR. FUTTERMAN:

Q Mr. Tomey, has Union Electric applied for any variances which may be provided in the St. Louis County air pollution ordinance?

A We have.

Q Have these been granted to you?

A They have not.

Q Is this a final decision?

A No, it's not a final decision.

Q Are you appealing that decision?

A Right now, as I get the picture, they're arguing amongst themselves who has the authority to grant variance. The counties say they do not have, and the state says they do not have, so now they are trying to get together, and how it will come out, it's supposed to be rendered within 30 days, to tell us what is the next step.

Q Are you seeking this variance because you cannot obtain coal, cannot economically obtain coal, which would meet the ordinance's requirements?

A We've been unable to obtain the coal.

Q You cannot obtain coal with the sulphur content of less than 2 percent?

A That's correct.

[387] THE COURT: So I have it clear, do you mean that the requirement of the ordinance is such that you cannot purchase coal on the market that will meet the requirement?

THE WITNESS: That's right, presently.

THE COURT: No low sulphur coal is available?

THE WITNESS: That's correct.

THE COURT: One other question: what percentage of low sulphur coal do you use in connection with your operation, do you know approximately?

THE WITNESS: Right now, about a sixth.

THE COURT: A sixth. In other words, then, five-sixth's is high sulphur coal?

THE WITNESS: That's correct.

THE COURT: All right.

* * * *

[393]

REDIRECT EXAMINATION

BY MR. KEMPF:

Q Mr. Tomey, during the course of Mr. Futterman's cross examination, when he discussed with you the pulverizers that you have at certain of your steam generating facilities which burn coal, does the fact that you have pulverizers at these facilities mean that your equipment can handle an unlimited amount of dust?

A Oh, no. That has no bearing on how much dust you can use, just from a matter of being able to utilize dust. About 50 percent is about all you can mix with the screenings and still do it successfully, because it really jams up the works. There are conveying belts and everything before you get to the pulverizer, a lot of transportation machinery to get the fuel to the pulverizer.

[394] Q Just for the benefit of the Court, what is the dust? What is the appearance of this substance? Let

us say I picked up a scoop of dust in my hand. What would be the result?

A It probably would run through your fingers. It would all go through a silk handkerchief.

Q I presume that is the reason why the conveying equipment would have difficulty with it?

A Well, of course the dust you buy is not that fine.

Q How fine is it?

A Well, there is a schedule on it, and I am not prepared at this time to give you what the consistency of the dust is. But it is considerably coarser than pulverized fuel that goes into your boilers for ignition or for burning.

Q During the course of your cross examination you also indicated that gas and oil were not, I believe Mr. Futterman's term was, price competitive with coal as a general proposition within your system. You also said that this was not the only factor that was considered. What are some of the other factors that are considered?

A Would you rephrase that question, please? I [395] don't believe I understand what you are asking.

Q During his cross examination, Mr. Futterman asked you whether or not as a general proposition for widespread use throughout your system gas was price competitive with coal and whether oil was price competitive with coal. I believe the record will reflect you indicated that under those circumstances they were not, but you indicated that apart from price there were other factors that had to be considered.

I am asking you now what some of those are.

A Of course one is air pollution. We are burning a substantial amount of gas this summer, during the summer season, on an air pollution suppression program at our Venice Plant.

Another one that Mr. Futterman brought out was the fact that when you have a coal mill out or want to overhaul a coal mill, you will buy gas so that you can overhaul your mill. The same could be true if your precipitators would happen to be out. You would overhaul your precipitators. The electrical system. You might use gas

or could use gas or oil to supplant coal as a fuel in your boiler so you can [396] do that work, rather than to discharge all the coal and fly ash into the atmosphere.

[397] Q Do you consider these other factors, such as air pollution, along with the price in deciding what particular fuel to use?

A You are more and more having to do that today. Air pollution is getting to be the overriding issue. The economics of the thing are getting less and less to be a factor.

Q You also referred to the subject of peaking during your cross examination by Mr. Futterman. I think he asked you some questions concerning the use of other fuels and the use of coal and how that relates to your peaking situation. I believe, and I don't mean to paraphrase the record, only to short-cut it, that you referred to the fact that you burn your most economical units initially and at the present time those are coal, and then as you increase your demand, you bring on your other stations.

My question during the course of your direct examination elicited the response which referred to the possibility of later in the decade possibly installing or at least giving consideration to the installation of a nuclear unit within the Union Electric system, and I ask would the same situation with regard to peaking exist should such a nuclear station come on line, and [398] what impact would that have on your coal burning?

A On a nuclear station, it is my understanding that those are base load stations. In other words, when those go into service, they have a generation continuously when you have the availability of the unit. That is in order that the economics will work out, because a fuel charge for nuclear units may be in the several millions of dollars for just a fuel charge. You work that continuously when you have the availability of the unit, and, of course, that would then supplant all the coal that normally would be burned under that situation.

* * * *

[400] BY MR. KEMPF:

Q Mr. Futterman discussed with you the experimental sulphur removal unit which Union Electric has been utilizing recently. When you came up to testify here at this proceeding, was that unit operational?

A It's shut down for more design repairs. It's strictly an experimental unit.

Q You indicated to Mr. Futterman that the Meramac and Venice stations in the St. Louis area presently do burn some high sulphur coal. Do you expect that to be true five years from now?

A Probably a shorter time than that, if we can find a source of low sulphur fuel, by either oil or coal. Because of the air pollution regulations, we are going to have to correct this situation.

Q Do you have any confidence at all that five years from now the Mound, Ashley, Venice and Cahokia plants will be burning any coal?

A Five years from now, I would say I would be mighty surprised that they would be burning coal unless there's a source of low sulphur coal available to us, [401] and then with that coal, there's considerable investment has to be made in precipitation equipment in order to utilize the lower sulphur fuel, lower sulphur coal, and it is possible, inasmuch as those are older plants, that we would just eliminate coal from those plants altogether.

Q Regarding the precipitator equipment to which you refer, are those low cost or high cost items?

A Precipitators?

Q Yes.

A They are extremely high cost, capital cost items.

Q You indicated that in the past you had purchased at least in one year a small amount of coal from the Little Dog Coal Company. Is that coal company in operation at the present time, do you know?

A They were having difficulty a few years back. We haven't bought any coal for a couple or three years from them, and I don't know whether they are or not. I don't think they are, but I don't know. They could well be.

Q You also mentioned that the reason you bought

coal from them was because they were located, I think you said, on the Illinois Terminal Railroad—

A That's correct.

* * *

[403] Q How many of your plants are on the Illinois Terminal Railroad?

A Well, only the Venice Plant.

Q Mr. Futterman also asked you some percentages in terms of the fuels that in the final analysis you are presently actually using at your generating station.

My question is, regardless of what fuel you eventually end up using at a station, do you consider all fuels when you make the decision as to what to buy in the final analysis?

A Well, yes. That is part of the analysis of what type of plant to build and where you build it, is fuel consideration, because that is one of the largest costs a utility has to face is fuel, electric utility.

MR. KEMPF: I have no further questions, your Honor.

THE COURT: All right.

MR. FUTTERMAN: I have a few questions, your Honor.

THE COURT: All right. Proceed as rapidly as possible, Mr. Futterman.

MR. FUTTERMAN: Yes, sir.

* * *

[407] RECROSS EXAMINATION

* * *

MR. FUTTERMAN: Your Honor, Mr. Kempf is trying to bring out the fact that Union Electric will be eliminating its coal consumption at the four plants mentioned in the next five years, and I believe he is trying to show that Union Electric was, I believe, decreasing its coal consumption, and I would like the witness to explain to the Court the true facts in regard to whether or not the total coal burned by Union Electric will be increasing when the new units come on line.

THE COURT: I think both of you have the wrong premise in this. You have to consider the pollution ordi-

nance requirements and all the rest of it, which, to me, is the vital element that is trying to be glossed over here. I'm interested in considering low sulphur and high sulphur, and that to me is the breakdown that we have here, and that applies to these new plants.

BY MR. FUTTERMAN:

Q If I may ask, Mr. Tomey, will the Labadie No. 4 Unit be burning high sulphur coal?

A It will be burning high sulphur coal, correct.

Q Regarding the new units to come on line in 1975 and 1976, do you have any idea whether the coal [408] will be high sulphur or low sulphur at this time?

A We had hoped that there would be a sulphur removal system commercially available to us by the 1975-76 generation, but it appears that that's not going to be available so therefore we will have to find a low sulphur fuel, either oil or coal, to burn, to fuel the 1975 and '76 generation with.

Q If you determined to use low sulphur oil, will that not have to be imported from abroad?

A It's my understanding that there is not a sufficient low sulphur oil domestically. It will have to be imported.

Q When you import low sulphur oil from abroad, do you not have to work through the State Department?

A You have to get an import quota in the Middle West.

Q Are your base load plants at the present time coal burning?

A Oh, yes.

Q Mr. Tomey, is it not a fact that one of the main reasons for delay of nuclear plants are the problems involved in the construction of these plants?

A Well, that could be one factor, but it would be only one factor.

* * * *

[412] THE COURT: I make this suggestion: when you go through the transcript, so that there will be no question later on, make those changes.

MR. KEMPF: Fine, your Honor. I do not think it is a substantive point. Thank you.

* * * *

[413]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC
COAL COMPANIES; AND FREEMAN COAL MINING COR-
PORATION, DEFENDANTS

Before HON. EDWIN A. ROBSON, Judge,
Thursday, April 2, 1970,
10:15 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,

appeared for Plaintiff;

MR. HAMMOND E. CHAFFETZ,
MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,

appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM

[414] THE CLERK: Case on trial.

THE COURT: Are you ready to proceed?

MR. EISEN: Yes, your Honor.

THE COURT: Will the witness take the stand, please.

JOHN M. MORRIS,

called as a witness by the defendants, having been previously duly sworn, was examined and testified as follows:

CROSS EXAMINATION

(resumed)

BY MR. EISEN:

Q Mr. Morris, you testified on direct examination that United Electric owned a substantial amount of underground coal in Colorado, is that correct?

A We have some leases out there with the Federal Government on both strip and underground.

Q About how many tons of underground coal does UEC own in Colorado?

A We have never been able to determine that, because we have not done any drilling on the underground. We can only guess at it from the Colorado Bureau of Mines estimates, which we certainly would want to check carefully. It has been estimated roughly at 60 to 70 million tons.

Q But there is a certain amount of that coal, [415] is there not, that you own, that UEC actually owns?

A It is all under lease. Wait a minute. There is a small amount we acquired from some property owners, private property owners, and I can't remember whether we bought the coal outright or whether we leased it from them.

Q Was that leased coal which you are referring to include coal which is controlled by location?

[416] MR. HEDLUND: Your Honor, I am going to object at this point, that is, to further questions in this direction and on this line, for the following reason:

It has been agreed among the parties to this lawsuit that the extent of the reserves of United Electric outside of the Midwest is not in issue. While I concede that, I believe, under direct examination I referred with Mr. Morris to some of these properties, it only was for the purpose of showing the results of the affiliation of these two companies

If Mr. Eisen wants to confine his cross examination to that aspect of Western reserves, I have no objection; but the quantity and quality of the reserves of United in the West are not at issue in this lawsuit.

THE COURT: Do you desire to comment?

MR. EISEN: I would take issue with the last statement counsel has made. I think we will concede that it is not in issue insofar as the determination of the effect of the merger on the relevant market area. However, the amount and quality of reserves in Colorado may come into importance in the question of relief and the question of the viability of any company which might be divested in this case in the [417] event that UEC is divested.

My examination in this regard is very brief, and I did not intend really to get into it as much as counsel did on direct examination.

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[430] BY THE WITNESS:

A So far as our company was concerned, and other strip mine companies, I do not agree with him.

Now, he may have been referring to underground coal, but even at that time that you mention, strip companies were still actively engaged in looking for strip reserves. I don't know what was going on in the underground business.

BY MR. EISEN:

Q They were actively engaged, is it your testimony, despite the fact that they had lost the transportation market and the home heating market?

A They were.

Q Don't you think that the absence of the demand or the relative absence of the demand for coal at that time, due to these changes might have affected Mr. Kolbe's thinking?

MR. HEDLUND: I object to that on the basis that I do not believe that there has been a foundation laid for asking Mr. Morris—

THE COURT: Let him answer so that we can proceed. He may answer, subject to the objection.

BY THE WITNESS:

A I don't know how Mr. Kolbe felt about it, but [431] we were continuing our efforts on strip coal, and Mr. Latimer thought that we were not doing enough, and that is why he wrote that memorandum, and that other companies were getting in ahead of us.

What Mr. Kolbe's feeling was about it at that time, I can't read his mind, or I couldn't read his mind.

BY MR. EISEN:

Q Are there any minable coal reserves available—I mean, are minable coal reserves in great demand today in the Eastern Interior Coal Province?

A When you refer to the Eastern Interior Coal Province, if I may, all I know is the Midwest, Indiana, Illinois and West Kentucky. Is that what you mean?

Q I will accept that as part of my question.

A I refer to that as the Midwest. I never heard of the Eastern Interior Coal Province. Your question was, is there active—

Q I said, is there a great demand for coal reserves in that area today?

A Yes, there is.

Q Are there any available for purchase, that you know of?

[432] A You mean, strip coal?

Q Either one.

A I don't know of any—or I didn't know of any at the time I retired.

[433] Q Have air pollution control regulations caused any reserves to be available on the market, that you know of?

A Air pollution has developed strongly in the last four years. It was just beginning when I left, and I have no knowledge of what has transpired since I left the company.

I do know from hearsay, reading the newspapers, that air pollution is definitely going to change the entire picture of coal mining and coal marketing, and what it has done to the reserves, I can't tell you.

Q Have you heard of any reserves being available by reason of the fact that nuclear generating facilities are being planned?

A Again, my answer is the same. I have been away from it four years.

Nuclear was beginning to be a serious threat, competitively, when I left. What has transpired since, I don't know.

Q But you have not heard of an reserves becoming available as a result?

A I would not have any way of knowing.

Q Do you think that the demand for coal will increase, Mr. Morris?

[434] A Again I must plead lack of up-to-date knowledge of the competitive factors. Air pollution is going to control that to a large extent, I think.

Q When do you date your lack of knowledge with regard to competitive factors in the market?

A November, 1966.

Q As of November, 1966, Mr. Morris, were you of the view that the coal industry would remain a vital force in the future of our country and its economy?

MR. HEDLUND: Your Honor, I don't really object to this, because Mr. Morris, up until at least that point, was well qualified, in my judgment, to speak with respect to every aspect of the coal industry, but I do believe this is beyond the scope of my direct examination.

THE COURT: Do you have any comment, Mr. Eisen?

MR. EISEN: I think this is a very important question, your Honor, and—

THE COURT: The point is whether it is beyond the scope of the direct examination. That is the point raised by Mr. Hedlund.

MR. EISEN: I may concede that it is beyond the scope of the direct examination, your Honor—

THE COURT: All right.

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[436] BY MR. EISEN:

Q Coal is our principal resource for energy, is it not, Mr. Morris?

A Yes; I would say so.

Q Did you see in the paper yesterday where it was reported that the president of Peoples Gas says that he can't sell gas to the utilities because there are only 15 years of gas reserves available?

A I did not see it.

MR. HEDLUND: I object to that as beyond the scope of the direct examination.

THE COURT: He has answered the question. Proceed.

BY MR. EISEN:

Q When was it, Mr. Morris, that you referred the Vogue property and the Pond River Field, I believe you called it, to Mr. Kolbe?

A Well, it is so far back that it is pretty hard for me to remember exactly. I would say it was back in the 1940's some time.

Q You referred on direct examination to a conversation with Mr. Wellington of the Central Illinois Light Company with regard to whether or not UEC would have sufficient reserves to bid on a contract with Central Illinois, did you not?

[437] A I did.

Q When was this conversation, Mr. Morris?

A Well, I stated it in my deposition. It was during the period starting about 1958, I think, or 1959, and continuing on up to the time that I retired.

Q This conversation?

A Many conversations.

Q Did you ever offer to supply him with Freeman back-up reserves?

A I told him that our relationship with Freeman was such that even though our reserves were not adequate, from his thinking, we could and would use Freeman as a back-up for the contract beyond the time we could supply the coal ourselves.

[438] Q What did he say?

A At the time I left, he had been unwilling to definitely give me an answer on that. In fact, the last year I was there, there was a letter written to me on that subject, which you have a copy of.

Q That was DX-26, to which counsel referred in his examination?

A You have the letter there. You know what it is.

Q No. Is that the same letter you are referring to?

A The same letter; the same letter, yes.

Q Did you then have in mind, in your discussions with him, the North Canton Field?

A No, I had in mind the Crown mine.

Q Has UEC continued to supply Central Illinois?

A They have.

Q From what reserves?

A From the reserves of their Cuba mine, and when those run out in another year or two, from the Buckheart mine.

Q Do you think that the reserves at the North Canton Field will be utilized?

A They will be utilized to the extent that we [439] can mine up there, and are listed as a part of the reserves available to the Buckheart plant.

That forms the life of the Buckheart mine, the North Canton reserves. We think we can mine a lot of it up there that we may have trouble with, that we may find ourselves in trouble on, but we have taken the position that that coal will move through the Buckheart plant.

Q You do not recall mentioning the North Canton Field to Mr. Wellington?

A He knew about the North Canton Field. I gave him a complete list of all our reserves and he knew all about what we had.

In fact, he sent his own people out around through Fulton County to investigate the reserves of all companies. He knew as much about the reserves in Fulton County as anybody in the coal mining business.

[440] Q Would you make a general statement about the utility people in that regard, that they know about as much about coal reserves being available as the coal mining people themselves?

A I would not, because I don't know. But I did know of the activity of the Central Illinois Light people, who were only about 15 or 20 miles away, and they had a lot of opportunities to go out through the fields, talk to the people, and they kept themselves familiar with the area.

Q How many tons would you estimate are available in the North Canton Field?

A Well, our figures are a better answer to that than I am. I would rather refer to the documents you have that we have submitted to answer that question.

Q I will withdraw the question for now.

THE COURT: All right.

BY MR. EISEN:

Q You testified on direct that Mr. Kolbe made no objection at the board of directors meeting when it was proposed that additions to the Industry Field be made at farmland prices, isn't that correct?

A I don't recall that he made any objection, no.

* * *

[445] Q Incidentally, the Industry reserves are carried on the reserve books of The United Electric Coal Companies at about 12 million tons, are they not?

A Whatever the record shows there. That is my recollection.

MR. EISEN: Will counsel stipulate that is approximately correct?

MR. HEDLUND: Will you give me an opportunity to look and find out?

THE COURT: Is it a matter of record?

MR. HEDLUND: It is a matter of record, your Honor.

MR. EISEN: It is a matter of record, your Honor, but I have to ask the question so as to put my next question to the witness.

THE COURT: I will take your word if it is a matter of record.

BY MR. EISEN:

Q Assuming that it is 12 million tons—

A I will take it if it is a matter of record.

Q Actually, there are many times more, maybe even ten times more, coal in the area than that 12 million tons, are there not?

A I have no knowledge of that. That would require, again, drilling, exploration, and a [446] tremendous amount of work to find out. It is purely a guess based on

what geological survey reports show, which we could not take for the purpose of acquiring reserves. We would want to know more about it. Our engineering people have said there is some other coal, some more coal, available down there. How much I don't know.

Q What figures did you use when you were discussing the possibility of developing that with these Iowa utilities?

A We told them about the surrounding area, what we might be able to acquire, that we would have to drill it, that we thought there was so much there—I don't remember what the figure was, but I don't think it was anything like what you said, that ten times, which would be 120 million tons.

Q How about eight times?

A Oh. I would say more nearly 25 or 30 million tons would be as much as I would estimate, based on my recollection. That is mineable coal, coal we thought might be mineable coal.

* * *

[450] Q He came on the same time as the other gentlemen you have just named?

A He came on the same time as the other gentlemen, but to represent these other stockholders.

Q And Mr. Nugent was chairman of the Executive Committee at that time, was he?

A He was, yes.

Q You testified on direct, Mr. Morris, that you informed major customers of the advantages of being combined with Freeman, do you recall?

A I did.

Q Did you tell them that the combined companies would be able to satisfy their needs better than your smaller competitors?

A Yes, I did.

Q Did you tell them that now they could do business not only with one of the top strip mining companies, but also with an underground operator with considerable underground reserves?

A I told them that the relationship of our two companies and the reserves of Freeman and their knowledge of underground mining made a combination which I

thought was very valuable to them as large coal [451] users and gave them a security beyond which our particular company could provide.

[452] Q You told them, did you not, that they had a much stronger company to depend on?

A That is correct.

Q And you were much stronger, combined with Freeman, then you were separated, were you not?

A That is right.

Q You had a lot more market power.

A Well, my sole thinking was, at that time competition being as severe as it was, and with the attitude of these buyers, we needed the help of Freeman to support our position in the market.

It did not occur to me or appear to me that we could exert any stronger pressure on the market except with the people we were doing business with, because we could at least supply their demands, but we had plenty of competition, and that was the reason I was going around telling that story.

Q Mr. Morris, you testified on direct examination that there were production problems at Fulton County in 1946, and you attributed such problems to the breakdown of the Kolbe wheel excavator at that time.

A Yes.

Q Do you recall that?

A Yes.

.

[480] BY MR. EISEN:

Q Isn't it a fact that the screenings produced at the Banner mine have a higher BTU content than those produced at the Crown mine?

A Yes, that is true.

Q And isn't it a fact that to the extent a utility is consuming dust, it is unable to consume screenings?

A I don't understand that question.

Q If it is using dust in the boiler, at that time it is not using screenings, isn't that a fact?

A Usually they mix it, as far as I know. In fact, most of those plants have to mix dust with screenings to some extent.

Q Does United Electric produce any dust?

A No.

Q You have never sold any dust from the Fidelity mine?

A Never sold any dust, no.

Q Does a ton of dust at the steam plant replace a ton of coal at the steam plant?

A It would depend on the BTU of the coal it was replacing in relation to the BTU of the dust. If they were both the same BTU, a ton of dust and a ton of [481] coal would accomplish the same purpose.

Q And the price of the dust is determined, is it not, on the basis of its BTU content?

A That plus the fact that it is a byproduct, and it is not too easily disposed of because of its physical characteristics and the difficulty in handling it.

Q Isn't it a fact that the cost of other sizes also is based on their BTU content?

A That is correct.

Q The dust which is consumed at consuming facilities originates in coal mines, does it not?

A Yes.

[482] Q Coals of other sizes consumed at consuming facilities also originate at coal mines?

A Yes.

Q Dust is shipped from the mine to the consumer via barge and rail lines, is that correct?

A That's correct.

Q Coals of other sizes are shipped from the mines to the consumer via barge and rail lines, are they not?

A That is correct.

Q What is the coal used for?

A Making steam for electricity.

Q And that is true of dust as well as screenings, is that correct?

A That is true.

Q Isn't it also a fact that dust and other coal sizes are consumed in the same generating units?

A That is correct.

Q You know, do you not, that a pulverizer makes coal into a dust size?

A Below the size of what is shipped from the mine. Makes it even finer.

Q Assuming that an electric utility has a pulverizer on its boiler, all coal sizes it consumes [483] will be crushed to a dust size or smaller prior to the consumption, is that correct?

A That's correct.

Q Isn't it true that most utilities do have pulverizers attached to their boilers?

A Most of them do, they also have other types of burning equipment in a good many instances, too.

Q Isn't it true that all coal sizes consumed in a pulverizer boiler will be crushed to a dust prior to consumption?

A That is correct.

Q Referring to the contracts about which you testified on direct examination, listed on Government Exhibits 88 and 89, being for the years 1965 and 1966, did you discuss any of these contracts with anyone from Freeman?

A You mean our own contracts or theirs, or what?

Q Do you recall that these exhibits show shipments by both companies, Freeman and United Electric, to facilities of the same companies? Do you recall that?

A Yes, I recall that statement.

[484] Q Did you discuss, taking the first entry, Caterpillar Tractor Company, Peoria, Illinois—did you discuss with anyone from Freeman your sales of shipments to Caterpillar?

A Not for Caterpillar. That wasn't a large enough contract to bring to the attention of Mr. Nugent or anybody over there.

Q When did the Caterpillar contract first go into effect?

A That was usually an annual contract, and we have shipped them coal for many, many years. I don't know how long. Many years. But it was renewed annually, or negotiated annually.

Q Which one of these accounts do you recall you discussed with Freeman?

MR. HEDLUND: I would like to ask if perhaps it

wouldn't facilitate things if you gave the witness a copy of the exhibit.

THE COURT: Is there any objection to doing that?

MR. EISEN: No objection.

BY MR. EISEN:

Q Referring to the left-hand column—

MR. HEDLUND: I am unclear of the question.

THE COURT: Read the question.

(Question read by the reporter.)

[485] BY THE WITNESS:

A Central Illinois Light Company; Commonwealth Edison Company; Illinois Power Company; Union Electric Company. Those were major contracts, and naturally we discussed them with our people on the Board and also Mr. Nugent.

BY MR. EISEN:

Q Referring to the Central Illinois Light Company, did you discuss with anyone from Freeman as to what prices you would submit on those contracts?

A Yes, I did.

Q With whom did you discuss that?

A I discussed it with Mr. Nugent.

Q Was that in your office or his office?

A I don't remember which.

Q In relation to the date carried on the exhibit, 1965, approximately when was his conversation, as nearly as you can recall?

A Oh, early in 1965, I would guess.

Q What was the conversation that you recall?

A We had a contract with Central Illinois Light at that time that had some time to run. I forget how long. There was an understanding that we would renew it or that we would extend it if they asked for it. [486] I merely told Mr. Nugent about it and what the price was, and the other terms of the contract. Also I remember at that time I told him we were going to have to consider what to do with Central Illinois Light beyond the time of our reserve playing out.

Q Did he tell you at what prices Freeman was selling Illinois Light?

A He did not.

Q Did you ask him?

A I wouldn't ask him. I couldn't reach the plant he was serving, and he couldn't reach the plant we were serving. There was no point in asking.

[487] BY MR. EISEN:

Q You say you discussed also with someone from Freeman the Commonwealth Edison contract?

A Yes, with Mr. Nugent.

Q And was that—where did that conversation take place?

A Oh, frequently we discussed Commonwealth Edison, and that, again, when he came on the Board, starting in about there, 1959.

Q Did you on those occasions discuss the price that you should bid?

A We did, yes.

Q Referring back to the Central Illinois Public Service Company, is that one of the contracts that you said you discussed?

A No, I did not discuss that.

Q Oh, I am sorry. Excuse me. I withdraw that. Illinois Power Company, I believe was one that you listed?

A That was a significant account, we discussed it, yes.

Q And did you discuss the price that you were to bid on that one, did you say?

A That's correct.

Q And I believe the last one you mentioned was [488] the Union Electric Company contract; is that correct?

A That's correct.

Q And did you discuss the price at which you were selling to Union Electric?

A That contract had been made prior to the time Mr. Nugent came on the Board.

Q Excuse me, sir, I think we should specify there are two contracts, one is for the Meramec plant and one is for the Venice plant. Did you discuss both of those contracts with him?

A We didn't ship to Venice, we only shipped to Meramec. We may have shipped a small tonnage to Venice, but very little, most of ours was Meramec, and we already had the contract when Mr. Nugent came on the Board, and I began my discussions with him, and I did discuss the Meramec contract with him, yes.

Q And these contracts come up from time to time for discussions with regard—with the customer—with regard to changes in price due to rate increases and things of that sort?

A They do, yes.

[489] Q So did you have occasion to discuss the price that you would ask of Union Electric with Mr. Freeman on those occasions?

A You mean—

Q With Mr. Nugent, I am sorry.

A You mean when we had to renegotiate the price because of a labor and wage increase?

Q Yes, sir.

A It was not necessary to discuss it with him because Union Electric and these utilities had a formula in their contract that was very precise and when you had a wage increase or anything of that nature, the contract itself spelled out just what figure you could use in establishing the price, so it was automatic.

Q Was that true of the Union Electric contract?

A That was true of the Union Electric contract.

Q These contracts are not uniform in every way in that respect, are they?

A No, they are not in every detail, no.

Q Even insofar as these escalation clauses, they are not uniform?

A They are not uniform, no.

Q Did Mr. Nugent discuss with you his contract—that is, the Freeman contract?

[490] MR. HEDLUND: I want to clear up what contract you are referring to Mr. Eisen.

MR. EISEN: I am referring to the Freeman contract to ship Orient No. 3 coal to the Meramec plant at Hillcrest, Missouri.

MR. HEDLUND: This is in 1965?

MR. EISEN: 1966, I am sorry.

THE COURT: Is there a question pending?

MR. EISEN: I believe so.

BY THE WITNESS:

A You asked me if I discussed Freeman's contract with the Meramec plant of Union Electric, I didn't particularly discuss it with them. I knew he had one and I knew the price was substantially under ours. I didn't have to discuss it with him because it was not competitive with me.

BY MR. EISEN:

Q What was his price, do you recall?

A Considerably under ours. I don't remember. I think it was, oh, at least 25 or 30 cents a ton, maybe more.

[491] Q How did you know that?

A I asked him.

Q So at least you discussed it to that extent?

A I did to that extent.

Q During part of the time that you were vice president in charge of sales or the sales manager of United Electric, you called on all of these companies listed on GX-89 and 88, did you not, as well as many others?

A Yes, I did.

Q And during some of that time—during some of the time when you were vice president in charge of sales, Frank Nugent was vice president in charge of sales for Freeman, was he not?

A Yes.

Q Did you in that period discuss coal prices with Mr. Nugent?

A Prior to the time they became financially interested in our company to a substantial extent, I did not. I can't give you the exact date of that but I think prior to 1955 I did not.

Q And why not?

A Well, I had no reason to, no occasion to. Why should I?

[492] Q Well, why did you have an occasion to afterwards?

A Because he had a substantial interest in our company and was wanting to know what was going on over there.

Q What is The Rail To Water Transfer Company?

A That is a dock located on the South Side of Chicago for the purpose of transferring coal from rail cars into lake vessels.

MR. HEDLUND: Your Honor, if for nothing else and it's near the adjournment hour, I am going to object again. This is outside of the scope of direct.

THE COURT: Do you have any comment?

MR. EISEN: Your Honor, I think that this goes to the question of whether they were competitors or not, and counsel, though he didn't ask about the Rail To Water Company, it's right in line with his examination with regard to whether they competed with each other or didn't compete with each other for the business of these utilities that he went into rather thoroughly, I thought, in his direct examination.

THE COURT: All right. He may answer.

Is this starting with a new line or will it be extensive?

[493] MR. EISEN: This part about the Rail To Water Company is short. We can finish that.

THE COURT: All right, then let's finish that.

MR. EISEN: Do you have the question, Mr. Morris?

THE WITNESS: I don't believe I have it in my mind.

THE COURT: Read the question.

(Record read.)

THE COURT: There is no question.

THE WITNESS: No question.

MR. EISEN: I am sorry.

BY MR. EISEN:

Q Isn't it a fact that both United Electric and Freeman were stockholders on the Rail To Water Company?

A That is correct?

Q And is it a fact also that Tom Tarzy when vice

president in charge of sales for United Electric was a director of the Rail To Water Company?

A That is correct.

Q And during the same time wasn't Barton Gebhart of United—of Freeman, I'm sorry—a director of Rail To Water?

A I believe he was.

[494] Q Between 1955 and 1960, how many occasions—on how many occasions did you discuss price with Mr. Nugent with respect to utility contracts?

A Every time we had a reason for changing in any way any of our major contracts. I can't tell you how often that was.

Q You testified on direct examination that United Electric and Freeman were "associated" in the late 1950's and early '60's, is that correct?

A That's correct.

Q Isn't it a fact that as of July 31, 1960, General Dynamics disclaimed that its 37 percent interest in United Electric constituted control of UEC?

A They may have, I don't know.

Q I would like to show you a document which I will ask the reporter to mark GX-108 for identification.

(The said document was thereupon marked as GX-108 for identification.)

MR. HEDLUND: Does the Government have an extra copy of that for defense counsel?

MR. CUSACK: Yea.

[506]

AFTERNOON SESSION

2:15 P.M.

Q Mr. Morris, you stated that—on direct examination—that UEC's Cuba Buckheart coal was not competitive with Freeman's Crown coal to the Caterpillar Tractor Company facilities listed on GX-88 and 89, did you not?

A I said we could not ship to Decatur, Illinois where Crown coal went on a competitive basis, and they could not ship to the two plants where our Cuba Buckheart was going. That's what I said.

Q Incidentally, you are not contending, are you, that one coal is preferred over the other because of the burning characteristics?

A Not in that instance, no.

Q Mr. Morris, I suggest to you that except for the Wisconsin Public Service Company there are no other consumers on GX-88 and 89 that prefer Freeman coal over UEC coal or vice versa because of burning characteristics?

A Yes, there are some.

Q Would you take exception to that suggestion?

A Yes, I would. Do you want me to name them?

Q Yes, sir.

MR. HEDLUND: Wouldn't it be easier, Mr. Eisen, and only fair if you would give the witness the [507] exhibit to which you are referring? I don't believe, your Honor, we are in a memory training session. Your Honor, I think it's only fair that he have the document in front of him.

THE COURT: I explained that before, whatever documents are available, unless there is some reason and you may state that now, Mr. Eisen, rather than having the witness try to guess, to let him have the benefit of the documents.

MR. HEDLUND: Thank you.

BY MR. EISEN:

Q Could you tell us, Mr. Morris, which if any of the companies on GX-88 and 89 could not use either the coal of UEC or Freeman because of burning characteristics?

A Inland Steel Company couldn't use our coal for metallurgical purposes. They could use our coal for steam.

Marquette Cement Manufacturing Company could not use our coal at Milwaukee or Cape Girardeau, and I don't know about their Des Moines plant. The burning characteristics were such that I was told they would have to have high grade coal at those plants.

Now let me look through this some more, [508] if you will.

Q Surely.

A Now, you are only talking about burning characteristics at this time, is that correct?

[509] Q Yes, sir.

A Wisconsin Public Service Company has already been referred to. Is that correct?

Q Yes, sir.

A I think that would be all that is on this list.

Q You might as well keep that list in front of you, Mr. Morris. I will ask you a few more questions about it.

Do you know the freight rate from the Crown mine to Caterpillar's Decatur plant?

A I can't tell you exactly. The Springfield mine of Crown, the Crown mine at Springfield had a favorable freight rate in there. We didn't have one that would allow us to ship in there.

Q And you did not know the precise cost of Freeman's freight rate of shipment to that vicinity?

A We knew it, because it was published in the regular railroad tariffs. Certainly we knew it.

Q Just sitting there now and testifying—I believe you testified the reason why you couldn't ship it in there was because of the freight rate, is that correct?

A That is correct.

[510] Q But you don't know what Freeman's delivery cost was in there now? You can't tell us, can you?

A I didn't know their price f.o.b mine, but I did know the freight rate compared to our own, and looking at the two, it is perfectly obvious we didn't have any chance in there.

Q The fact that it was more advantageous for them to ship in there did not necessarily mean that you could not have shipped in there at a profit, did it?

A If we wanted to take a sacrifice on our price, below what we were selling coal at to our regular customers, where we could meet their favorable freight rate, we could have moved on in there, but not at any kind of price that we would be willing to take.

[511] Q Because the demand for your coal elsewhere afforded you a greater profit than had you shipped in to Caterpillar at Decatur?

A That is correct.

Q When was the last time you reviewed the freight rates from Cuba or Buckheart to Decatur, Illinois?

A 1965, 1966.

Q Sometimes those freight rates can be negotiated, can't they?

A On volume tonnage, yes, and minimum trainload shipments. Decatur didn't use enough coal to justify that sort of arrangement with the railroads. It takes a million tons a year or thereabouts to negotiate that kind of freight rate break.

Q But, Cuba-Buckheart and Crown are both close enough to Decatur, Illinois, are they not, so that a variation in either cost of production or cost of freight could make or could change the circumstances from what they were at the time you are referring to that you are testifying about?

A At the time when I last had anything to do with it, the price we would have to make at Decatur to put any coal in there was too low for us.

[512] Q Mr. Morris, you stated that Freeman sold dust below its cost or below cost from its Orient Mine to the Grand Tower Plant of Central Illinois Public Service Company, is that true?

A I think that is true, yes.

Q What were the costs of producing this dust at Freeman Orient Mine?

A I don't know about Freeman's cost. I only know what Mr. Nugent told me about the price of dust and what our customers told me about the price of dust, and I could see from the price that it must be below cost of production.

[513] Q Below cost of production as compared to cost of production of screenings?

A You have to put it all into one package. One piece of coal would cost just as much as another to produce. When you prepare through a washing and cleaning plant, you have to average the price that is going to return you an average realization sufficient to make a profit.

Metallurgical coal sold at a high price. Dust sold below cost. The two together were very satisfactory.

Q So that when you were using the term "below cost," you were using it only in the sense that it was not below the cost of mining the dust.

A Dust was a part of the product that came up from the mine. It cost just as much to produce dust as it did anything else.

Q And you are saying that according to Mr. Nugent, they lost money every ton of dust that they sold into the Central Illinois Public Service Company?

A Yes, sir. That's right.

Q In other words, Freeman was losing money on approximately 102,803 tons shipped to the Grand Tower plant?

[514] A That is correct.

Q You stated that Freeman was shipping this by-product dust to the Meredosia plant of the Central Illinois Public Service Company, which plant UEC was also shipping.

This amounted to approximately 82,000 tons in 1965.

I suppose that that dust in this instance was also sold below cost.

A That came from the Crown mine, and I am sure it was below cost, although I didn't know the price of it.

Q And you are sure how, sir?

A Because that is the only way they could have put it in there against Cuba-Buckheart for the kind of transportation cost we had versus theirs.

[515] Q You stated that UEC did not have any high quality coal with which to compete with the metallurgical grade coal and therefore did not produce or sell the by-product dust, is that correct?

A That is correct, plus the fact that our plants were not designed to make it.

Q But that the Freeman Crown Mine did sell dust?

A They did for a period of time.

Q Is it not a fact, Mr. Morris, that UEC's Banner and Cuba Mines produce a higher quality coal than the Freeman Crown Mine?

A Banner does. Cuba washed coal versus Crown

washed would be about the same. If Cuba washed versus Crown raw, the washed Cuba would be better, yes.

Q Did you testify that the washed coal of each would make the Cuba coal superior in quality to the Crown coal?

A I said they would be about the same in my estimate.

Q You stated that UEC coal from its Fidelity Plant to TVA was sold under contract below cost, is that right?

A That is correct.

[516] Q This amounted to approximately 250,000 tons of coal each year, did it not?

A In what years? Do you have it there? These two years 1965 and 1966?

[517] Q Yes, sir.

A Yes, sir, that is correct.

Q Fidelity Mine was able to remain a profitable mine despite the fact that it sold approximately half a million tons of coal at a loss to TVA in those two years?

A Only our reports will so indicate.

Q What were your costs at Fidelity, the cost of production per ton?

A I would rather look at our reports to give you that. I can't do it from memory, four years ago.

Q But you are going on memory that those shipments were made below cost?

A I am.

Q What was the realization per ton under Freeman's contract with TVA?

A On United Electric's coal?

Q No, Freeman's coal.

A I don't know.

Q Do you know whether its sales were below cost to TVA?

A I don't know. I can only assume they were not, or he wouldn't have made the contract.

Q Mr. Morris, you stated that Freeman's coal [518] shipments to Union Electric's Venice plant, representing approximately 128,800 tons of coal in 1965, was again this byproduct, dust, right?

A Yes, from my best knowledge and recollection I'm sure it was.

Q I take it that this shipment was also sold below cost?

A I would say so, yes.

Q You stated that Freeman's coal shipments to Union Electric's Meramec plant amounting to 172,000 tons in 1965 would also be dust byproduct, did you not?

A I did.

Q Again, is it your contention that this dust was sold below cost by Freeman?

A I think it was, yes.

Q You stated that the Alma and Stoneman plants of the Dairyland Power located on the Mississippi River was the best market for the Belleville district mines, including Fidelity? Do you recall that?

A That is correct.

Q What did you mean by best markets?

A Well, all of the plants on the Upper Mississippi River, starting at Minneapolis on the north down to and through Dubuque, Iowa, constituted our normal markets and our best markets for Fidelity coal. That is because of the transportation.

[519] Q So that the companies located in the Belleville Freight Rate District can make the greatest profit on shipments to the Stoneman and Alma Stations, is that your testimony?

A They could make better profits there than trying to go into an area where they didn't have a transportation advantage, yes.

Q Is it your testimony that other coal companies which cannot enjoy as great a profit from sales to the Alma and Stoneman Plants of Dairyland Power as the Belleville mines are not in competition for the fuel requirements of those plants?

A Only those that are willing to take a substantially lower price for their product, and we never found them to be serious competition in those plants, no.

Q But if that kind of a situation arises where you find that you have competitors who for reasons best known to them, as far as their own financial arrange-

ments are concerned, are able to overcome a disadvantage in the freight rate, you couldn't assume they are operating at a loss thereby, could you?

A Not unless I knew their prices and knew [520] something about their cost of production.

Q You stated that Freeman was shipping dust to the Alma and Stoneman Stations, is that correct?

A Yes, sir.

Q GX-88 shows that in 1965 Freeman shipped almost 56,000 tons of coal to the Alma Station. Is it your belief, again, that this dust was shipped below cost by Freeman?

A I believe it was.

Q You stated that UEC and Freeman did not compete for the business of the Foote Minerals operation in Keokuk, Iowa, is that right?

A That was under the same circumstances as these other plants that you have brought to my attention.

We shipped screenings from our Cuba and Buckheart Mines on a favorable freight rate because we were not—not from Buckheart—on Cuba because it was on the TP&W Railroad with a direct rather short haul to Keokuk.

Freeman put dust into that plant via the river and for that reason I didn't consider them competitive.

Q UEC was shipping coal by rail and Freeman was shipping dust by barge, isn't that right?

A That's correct.

[521] Q Now, the document shows that Freeman shipped approximately 73,000 tons to Keokuk.

MR. HEDLUND: Correction, Mr. Eisen. On my copy it shows 25,000 tons, if I have got the same year. Are you talking of 1965?

MR. EISEN: I will check mine. I was reading from my notes, counsel, not from the document itself.

I stand corrected—I see, 73,000 tons.

MR. HEDLUND: Your Honor, may I compare as to what we are looking at?

THE COURT: You certainly may.

MR. EISEN: I was looking at the wrong column here.

THE COURT: All right.

BY MR. EISEN:

Q 25,589 tons.

A That is what I see here.

Q Would it be your testimony that they were selling then at a loss?

A It would.

Q And your testimony would be the same for 1966?

A It would.

Q As to the 31,000 tons they were shipping in of dust?

[522] A It would.

Q You stated that UEC could not compete with Freeman for the Wood River station of the Illinois Power Company because Freeman was shipping dust to that station, is that correct?

A That's correct.

Q You stated that Belleville coal did go into the station on a unitized train rate set up by the GM&O Railroad, but that UEC wasn't on the railroad and couldn't participate in that movement, is that correct?

A At the time I left, we—or before I left, we attempted to interest Illinois Power in our Fidelity coal. We tried to get a rate from the Illinois Central on which we were located or the Missouri Pacific, that would permit us to go in there and we couldn't do it, so my testimony is as it was before.

Now, what's happened since then, I don't know.

Q You hadn't heard that UEC was able to ship into there in 1967?

A I had not heard that.

Q So would you know whether or not UEC and Freeman compete for the requirements of the Wood River facility?

MR. HEDLUND: Are you asking—excuse me, I will [523] object unless you specify the time.

THE COURT: Set the date.

BY MR. EISEN:

Q 1967.

A I do not know anything about 1967.

Q You stated that Freeman's shipments to the Wood

River plant of Illinois Power involved the by product dust, is that correct?

A I did, yes, sir.

Q GX-88 shows that this shipment amounted to approximately 116,000 tons in 1965, is that correct?

A Which plant are you referring to now?

Q The Wood River plant.

A Yes, sir, that's correct.

Q I suppose here again you are contending that the shipment was sold below cost?

A Yes, sir, I think so.

Q With respect to Freeman and UEC coal shipments to the Marquette Cement Company, you stated that UEC supplied the Oglesby plant of Marquette where it had the advantage of low transportation costs by river and that Freeman's coal went there, to their other plants of Marquette listed on GX-88, right?

A That's right.

[524] Q You stated that UEC could not compete for the business of those plants, is that correct?

A That is correct.

Q One of these plants is located in Milwaukee, is it not?

A That's right.

Q You are not contending, are you, Mr. Morris, that UEC does not ship coal to Milwaukee?

A No, but we never did to that plant.

Q GX-89 shows that both UEC and Freeman shipped coal to Marquette's Oglesby Plant in 1966, does it not?

MR. HEDLUND: I want to make certain if the witness has the document with the 1966 shipments before him.

THE WITNESS: Yes, I have it.

BY THE WITNESS:

A In 1966 this statement shows Freeman shipped to Oglesby 3,934 tons. Is that correct with your statement there?

BY MR. EISEN:

Q Yes. You are not contending that that is dust, are you?

A I don't know what it was. It was a small amount

of tonnage. It was insignificant. I didn't [525] even know it went in there.

Q Cement companies can't use dust, can they?

A Yes, they can use dust. Some of them can. Some of them can't.

Q Pardon me?

A I say some of them can and some of them can't.

Q To manufacture cement?

A I say some of them can use dust and some cannot.

Q Do you know whether Marquette Cement could use it?

A They tried it and it wasn't successful. This may have been a test. I don't know.

[526] Q I notice that Mr. Hedlund in asking you about the customers in GX-88 and GX-89 did not ask whether Freeman and UEC competed for the requirements of Commonwealth Edison's facilities. Were the sales set out in GX-88 and GX-89 to Commonwealth Edison by UEC and Freeman made in competition with each other?

A Everybody that can get a unitized train rate or get to the river and get a low river transportation cost can compete for Commonwealth Edison's business. Commonwealth Edison uses more coal than anyone else in the United States, I guess, except TVA, some 10 or 12 million tons a year, maybe more by now. I don't know. With that large volume of purchases, they reach out into many fields, always on the basis of the lowest transportation that they can secure.

So to that extent Crown, Indiana, Belleville, Fulton County, if they can get the right kind of transportation, can go into Commonwealth Edison's plants.

The delivered cost from those different fields vary somewhat, not to any large degree, because Commonwealth has too sharp a purchasing agent to let them do it.

That is my answer.

Q Without going through the mathematics of [527] totaling up these figures, approximately how much did you sell to Commonwealth Edison in 1966, as shown in GX-88?

A It shows here 1,777,000 tons.

Q You are reading from which one?

A '66. Do you want '65?

Q '65 is 1,543,127.

A Plus 51,000 tons from the Diamond mine, which made it 1,594,000.

Q Freeman sales were approximately what in 1965?

A Well, you would have to total these different figures here. There are about five stations and five mines. You would have to total them up.

[528] Q In 1966 they were 37,529 tons and 1,627,308 tons for the two stations mentioned there, were they not?

A You mean Freeman?

Q Yes.

A Whatever this thing shows is what it is.

Q Substantial tonnage, would you say?

A Yes. Big tonnage.

Q Was that dust that was going in there, Mr. Morris?

A No.

Q Mr. Morris, a coal company is limited, of course, by the amount of coal that it can produce, isn't that right?

A It certainly is.

Q And it will sell its production to the consumers from whom it can realize the greatest profit?

A That is a good business philosophy.

Q But this doesn't mean, does it, that a coal company's present consumers are the only consumers to which it can sell or to which it may sell at a profit?

A I didn't get the first two words of your question.

. . . .

[535] Q You say you were looking for someone to merge or buy out—

[536] A If we could find somebody in the strip industry who had some adequate reserves. We talked to some people, talked to anybody who had any land that we might get hold of. We went into all kinds of areas trying to find additional reserves, and that money was available any time we found anything like that.

. . . .

[541] MR. CUSACK: Your Honor, may I speak to Mr. Eisen for just one second?

THE COURT: All right, you may.

MR. CUSACK: Thank you, your Honor.

THE COURT: All right.

MR. EISEN: Thank you, your Honor.

BY MR. EISEN:

Q How much were you willing to spend to develop the Denmark Field?

A Whatever was necessary.

Q Approximately how much would that have been? Do you know?

A It would depend on the size of the mine you could put in, whether or not you had to pay cash for the coal, or whether it was on a royalty basis over an extended period, and a lot of things before you can determine how much cash it would require.

We never got far enough along in our discussions—we didn't make any progress for that matter—so I couldn't tell you what it would cost.

Q But at any rate, after this cash began to become accumulated in 1964, you did not put the money back into the business for whatever reason, right?

A None, no.

.

[545] Q You testified at page 240 that Mr. Nugent and specially other members of the Board constantly asked you to exert every effort to get strip reserves which the company could utilize. Did Mr. Nugent ever ask you to get deep reserves?

A No, he did not.

Q You testified that while you were president of the United Electric you did not have to submit to General Dynamics in New York any approval of capital expenditure requests?

MR. EISEN: I think I already covered that subject matter, your Honor. I withdraw that.

THE COURT: All right.

BY MR. EISEN:

Q Mr. Morris, during the time that you were president, from 19—well, throughout your entire presidency

—the reserves of United Electric kept pace or out-matched the production for that period in each year, did it not?

A My recollection is that that is correct. I would have to refer to the figures to be sure.

* * * *

[579]

RECROSS EXAMINATION

* * * *

BY MR. EISEN:

Q Isn't it a fact, Mr. Nugent, that—I mean, Mr. Morris, so sorry.

A It's a compliment.

Q That they used to have to look for ways to dispose of gasoline before they developed facilities to consume gasoline, did they not?

A I don't know anything about it.

Q And wasn't natural gas at one time a waste product?

A I don't know anything about that.

Q You wouldn't know about that?

A No.

Q But dust, definitely, is an energy resource utilized today right along with other sizes of coal, isn't that correct?

A Yes.

MR. EISEN: Thank you.

THE COURT: Is that all?

MR. EISEN: That is all.

THE COURT: All right. Thank you. You are excused.

THE WITNESS: Thank you, your Honor.

MR. HEDLUND: Thank you, Mr. Morris.

THE COURT: You are excused.

* * * *

[582]

REUBEN THORSON,

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Will you please state your name and profession, sir.

A Reuben Thorson, investment banker and stock broker.

Q And with whom are you an investment banker?

A Paine, Webber, Jackson & Curtis. I am a limited partner now, former chairman of the firm.

Q Formerly chairman?

A Yes.

Q Sir, would you try to keep your voice up; it's not a microphone, it's only for the court reporter.

A Okay.

Q Would you please briefly describe your education and business background.

A Well, I came to Chicago from the University of Minnesota in 1924, and have been on LaSalle Street ever since that time, been actively engaged in our business, financial affairs and formerly chairman of [583] the Midwest Stock Exchange and other things.

Q Thank you.

Q Were you a director at one time of the United Electric Coal Company?

A Yes.

Q When did you become a director?

A I believe October 30, 1959.

Q And how long did you serve?

A Until the consolidation with General Dynamics.

Q And when was that, if you recall?

A The middle or late '66, as I recall it.

Q Would you please describe the circumstances surrounding your election to the Board of United Electric?

A Well, Incorporated Investors in Boston, which is a large investment trust, owned about 10 percent of the common stock of United Electric, and there was a change in the Board structure of the company at the election of directors in the fall of—in October 1959, and the Midwest interests—Material Service interests nominated four directors and the incumbent management nominated four directors and Charles Devens the president of Incorpo-

rated Investors, apparently, was invited to have a representative on the Board and asked me to serve, and I was acceptable apparently to Mr. [584] Crown, and Mr. Devens wanted me to represent them on the Board. So, I was sort of backed into it, if you will, without any affiliation one way or another.

Q I see. Do you know, Mr. Thorson, whether or not Mr. Kolbe was in favor of the restructuring of the Board at that time?

A I had no prior knowledge prior to my going on the Board. Anything I might say there would be pure conjecture.

Q Do you have any knowledge of his attitude toward that, after you became a member of the Board?

A No, but I imagine human impulses are quite normal, and I could draw my own conclusions, but I haven't any specific knowledge of the subject.

Q Thank you.

MR. CUSACK: I move to strike on the grounds of hearsay his answer.

MR. HEDLUND: I don't believe the witness testified one way or the other.

THE COURT: I don't believe he testified one way or the other. What was hearsy?

MR. CUSACK: The answer only should be stricken then.

THE COURT: It may stand.

[585] BY MR. HEDLUND:

Q Mr. Thorson, when you came on the Board of United Electric, were you aware of any attempts or negotiations that had been under way—were then under way—looking toward a merger of United Electric with another coal producer?

A My knowledge of that is very slight. There apparently had been discussions prior to my coming on the Board with Truax-Traer. It was mentioned very briefly at subsequent Board meetings on two or three occasions, as I recall—it's some time ago now—but I thought that the conclusion that I drew without getting into it in depth was that United Electric was rather the suitor,

and the Truax was the unwilling bride, if I may put it that way, to-be, and the things just fell through, and there wasn't any great interest on the part of Truax, if I remember correctly.

[586] Q Do you recall any discussions after you came on the Board that you may have had with other directors about a possible merger of Freeman and United Electric?

A I never really discussed it to any extent with anyone. I think I did on one occasion, walking back to the office after a meeting with Mr. Ames, perhaps discussed it. I never discussed it with Mr. Nugent or certain other principal men of the situation. I knew of the stock interest building up in Material Service.

Q That is by Material Service?

A By Material Service at that time. Having been in the financial business all these years, I naturally assumed—if I can use that word—that ultimately there would be some discussions along those lines.

Q Would you have been in favor of such a merger had it taken place while you were on the Board of United?

A Yes, I would have.

Q Would you explain why?

A Well, there are two reasons. I think that United Electric had a strip reserve coal problem. I am no expert in the coal business. I want to make [587] that eminently clear. But these discussions came up, and the enlarging of the reserves was very difficult to achieve and they had real problems. I could see the assets wasting away and the reserves in Freeman, as I understand it, were substantially greater, and that one company might well augment or supplement the other.

In addition to that, I felt that the management that I had met, people at Freeman, were very imaginative and very sympathetic with our management, and it would have been harmonious and profitable and efficient.

[588] Q Did Freeman manage to have any capability that United Electric did not have?

A Well, I have the highest regard for—

Q I was not speaking, sir, in terms of personal com-

petency. I was speaking in terms of the operations at Freeman.

A I am not familiar with the operations of Freeman, only to the extent that I knew it was a very successful operation. I thought you were inquiring about the executive talent available.

Q At any of the board meetings which you attended do you recall any discussions of using the assistance of Freeman in mining deep coal by United Electric?

A Well, all I can say is that United Electric were strip mine operators, and I think their knowledge or capability in deep mining was somewhat limited, and I think that Freeman, from what I understand and from what Mr. Nugent and others said,—and he was certainly well qualified to say it—were very familiar with the problems of deep mining and offered the services in every way they could to be helpful to United Electric in that area.

Q Do you recall any particular field of deep coal [589] owned by United Electric?

A Well, there was an area where we, United Electric management was authorized by Amalgamated to acquire some properties contiguous to, I think, Round Prairie, that operation, some deep mines. It was suggested obviously that if they went ahead with that, Freeman would be very helpful or perhaps would be very helpful in undertaking that project.

Q Do you recall why it was decided for the first time to disclose United Electric's owning of deep coal reserves in the 1961 annual report?

A Well, I was on the audit committee, and we looked at the audit and the annual report before it was printed. Freeman, being deep mine operators and Material Service having a substantial interest in United Electric, we, of course, attaching substantial values to underground reserves, thought that as long as we had the reserves they should be thrown in in a bulk figure of all reserves. It is a matter of full disclosure to stockholders, really, is what it amounts to.

[590] Q Mr. Thorson, do you recall the Board meeting at which it was decided that United Electric would pur-

chase additional reserves at the company's so-called Industry Field but only at farmland prices?

A I recall that. Not with any preciseness, but I remember that came up, and I remember the language was used, because I was always curious as to whether, knowing so little about the coal business when I went on this, as to what values attached to the land over and above the coal reserves underlying it, Industry Field was discussed as a long-range possibility and I can remember that the agreement was arrived at by the Board that they wouldn't purchase them over farmland prices, would pay no premium for that.

Q Do you recall whether or not Mr. Kolbe dissented from that policy at the time?

A I don't recall that he did.

Q Did you ever have any suspicion or knowledge of facts that Frank Nugent or the other Freeman-Material Service directors were attempting to operate United Electric for the benefit of Freeman-Material Service or indeed General Dynamics rather than for the benefit of all the stockholders?

A It never entered my mind.

[591] Q The Government contends in this case, Mr. Thorson, that after Frank Nugent came on the Board, United Electric was held back in purchasing additional coal reserves. In your opinion, based on what you learned at the Board meetings, or other contacts with the company, is there any justification, in fact, for such a charge?

A Not in my opinion.

Q You say there is not?

A No. The urgency of building up the reserves seemed to be one of the principal topics of discussion at every Board meeting practically that I attended, and Mr. Nugent was one of the first men to advocate the acquisition of additional reserves with anywhere near reasonable prices.

Q To your knowledge, did Frank Nugent or any other Freeman-Material Service director ever interfere with or try to block United Electric in making any needed capital expenditure?

A Certainly not. They were very substantial when I was on the Board.

[592] Q In your opinion did Mr. Nugent assist in making United Electric a vigorous, progressive company?

A I feel that he felt his responsibilities as a director responsible to all the shareholders of United Electric, and I think his intentions were honorable, and at the Board meetings I think they were all weighted heavily and completed in favor of General—United Electric Coal.

Q Do you recall, Mr. Thorson, what the tender offer price was for the stock of United Electric?

A \$50 a share.

Q In your professional judgment, was that price reasonable and fair?

A I thought so. I still think so. There was a premium of about fifteen, sixteen, seventeen percent over the then market of 42, and I think that was a fair price—it was a generous premium in my judgment.

Q I would like, sir, your opinion of Frank Nugent's competency as a director of United Electric and as the chairman of its Executive Committee.

A Well, all I can say is that I have served on a number of Boards. I have told Mr. Nugent to his face on several occasions that he is one of the best informed men in his industry that I have ever had the pleasure of [593] meeting.

MR. HEDLUND: Thank you. That is all.

THE COURT: How long will your cross examination be?

MR. CUSACK: Your Honor, I really don't know.

THE COURT: You won't be through in five minutes, I am sure.

MR. CUSACK: I don't believe so. I don't think I will be through in a half hour, either.

THE COURT: Then we will recess until 9:00 o'clock tomorrow morning.

Do you have something?

MR. HEDLUND: Your Honor, I told Mr. Thorson that I thought we would be finished with him this afternoon. I have not consulted with him about his availability in the morning. I have not done that. I would

like to do that. If he is not available in the morning, I will just have to bring him back. We also have two witnesses from out of town in the morning.

THE COURT: You have out-of-town witnesses here. Ask the Government if they want to waive their right to proceed immediately on cross examination.

MR. CUSACK: Can we inquire of Mr. Thorson if he would be available at 9:00 o'clock.

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[595]

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

**Before the HON. EDWIN A. ROBSON, Judge,
Friday, April 3, 1970,
9:00 o'clock a.m.**

PRESENT:

**MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,**

appeared for Plaintiff;

**MR. HAMMOND E. CHAFFETZ,
MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,**

appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM.

. . . .

[597]

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VICTOR H. WOOD,

called as a witness of behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KEMPF:

Q Please state your name, sir.

A Victor H. Wood.

Q Mr. Wood, what is your home address?

A My home address is 1300 West 47th Street, Minneapolis, Minnesota.

MR. KEMPF: Could you please speak up a little louder.

THE COURT: That is not an amplifier. That is merely a tape recorder.

THE WITNESS: All right, sir.

BY THE WITNESS:

A 1400 West 47th Street, Minneapolis, Minnesota.

BY MR. KEMPF:

Q By whom are you employed, sir?

A Northern States Power Company, Minneapolis.

[598] Q What is your business address?

A Business address is 114 Nicolett Mall, Minneapolis, Minnesota.

Q What is your position with Northern States Power Company, Mr. Wood?

A My present position is Superintendent of Fuel Procurement, which entails the supervision of the purchase of all fuels for generation.

Q Mr. Wood, how long have you been with Northern States Power?

A I started in 1953 about 17 years ago, the first two years involved in power plant work and the last 15 years in the fuel procurement end of the business.

[599] Q Could you describe for us briefly, Mr. Wood,

the general area served by Northern States Power Company.

A Our major area is in the Twin Cities area of Minnesota, but we also operate in the eastern part of Wisconsin and the northeast part of South Dakota, and in a couple locations in North Dakota.

Q Did you say the eastern portion of Wisconsin?

A Yes. I'm sorry, the western portion of Wisconsin.

Q Mr. Wood, I would now like to show you Defendants' Exhibit 144, a map entitled "Investor-Owned Electric Utility Service Areas." This is the map which we have mounted on the cardboard here, and I would ask if you could point out to use the specific service areas served by Northern States Power Company.

A Our areas would be the areas in red marked 109, located in Minnesota, Wisconsin, South Dakota and these two spots in North Dakota.

Q Thank you, sir.

What fuel does Northern States Power Company use in generating electricity at its plants?

A We use a variety. We are using coal, bituminous and sub-bituminous coal, lignite, natural [600] gas, oil, and uranium, nuclear fuel.

Q Mr. Wood, I would like to hand you at this time Defendants' Exhibit 149, the 1968 Annual Report of Northern States Power Company, and I would like to refer you to page 3 thereof.

I notice that the last sentence of the paragraph at the top of page 3 states as follows:

(Reading) "We also feel that the presence of nuclear power as a competitor has assisted us materially in controlling the costs of fossil fuels."

My question is, how does the presence of nuclear power assist you in controlling the cost of fossil fuels?

A Each time we have to make a decision on a plant, we must look at all the factors associated with the total cost of the generation, and this means that all fuels, including the nuclear, are in heavy competition with the coal in a selection of a plant site and a plant itself.

Q Has Northern States Power constructed any gas-fired generating stations in recent years?

A Yes, we have. We have erected two peak shaving, gas peak shaving plants in the last two years, [601] and one—both of these are gas turbines, and we have also changed our Pathfinder nuclear plant and converted that to oil just this past year.

[602] Q To oil?

A To oil and natural gas.

Q What is the kilowatt capacity of the plants to which you have referred?

A Approximately 200,000 kilowatts would be the total.

Q Do you have any existing plants to build additional gas-fired stations?

A Yes. We just announced a plan about two months ago that entails the installation of about 300,000 kilowatts in 1972 of gas peaking facilities in the South St. Paul area.

Q Do you have any nuclear stations under construction or planned?

A Yes. We have two stations, of which there are three units. Our one station is Monticello, which is located northwest of the Twin Cities. This is a 545,000 kilowatt unit.

South of the Twin Cities, near Red Wing, is our Prairie Island unit, our Prairie Island Plant, that is, which consists of two units of about 550,000 kilowatts each.

Q When is the schedule of operational dates of these three facilities?

[603] A The Monticello Plant will go in operation this year. The first unit of the Prairie Island Plant will be in 1972. The second unit will be in 1974.

[604] Q What led to the decision to build these nuclear stations?

A Again we looked at the over-all economics of the fuel and the plant, the plant site, and it was based on economics, and also environmental suitability and desirability.

Q In considering the over-all economic picture to which you have referred, did you consider specifically other alternative fuels?

A Yes. We considered coal, oil and gas at each of these sites.

Q You mentioned environmental suitability. Does Northern States Power consider environmental suitability to be an important factor in its decisions to build?

A Yes. This is a big factor in these times of making these decisions.

Q I would like to refer you at this point to the exhibit I handed you a short while ago, Defendants' Exhibit 149. I would like to refer you to page 18 thereof. Mid-way down the page, there is the headline which reads "We are a regional leader in air quality control," and the paragraph itself states:

[605] "NSP's commitment to controlling and improving air quality is second to none in the area. We've invested \$8 million since 1942 in this voluntary program. During 1968 we converted our southeast plant in Minneapolis and the two oldest units in the High Bridge plant in St. Paul from coal burning to gas and oil fuel. We're carefully watching emerging technology for reducing sulphur dioxide emissions from coal burning plants so that we can determine when the new processes are practical. NSP's nuclear power plants also will make a major contribution to air quality. By 1974 35 percent of the company's total generating capabilities will be in nuclear units that do not produce dust or sulphur dioxide. By 1974 NSP will burn about 4 million less tons of coal annually than would have been required if coal burning units of comparable generating capacity had been built. That is a coal and sulphur dioxide reduction of 55 percent."

Are these plans still true as of this date?

A Yes, they are.

[606] **Q** How important are hydroelectric plants in the Northern States Power over-all system?

A They really are quite important. Our generation in 1968 amounted to about 7 percent of our total generation.

Q What year was that?

A In 1968.

Q Under what sort of purchasing arrangement does Northern States Power secure the coal which it does buy?

A By and large our coal is purchased under long term contracts, probably 80, 85 percent of the coal is purchased this way.

Q Of how long a duration are these contracts?

A We will go from five to ten years. In the last few years we have more or less pulled in our horns, and we are going at about five years due to the uncertainties of new generation and trying to remain as flexible as we can.

Q Where are the mines from which Northern States Power could secure its coal located?

A By and large the Belleville District of Illinois has been our natural source of coal. This is due to the favorable freight rate situation from the [607] district to the river and the biggest share of our coal has always come up on barge on the Mississippi to our plants. Most of our generation is located on the Mississippi in the Twin City area, so that it has been the Belleville area of Illinois that has been the major source. We do buy spot coal from the West Kentucky area and some from the Southern Illinois area, but they are not really competitive on a long-term basis with the Belleville area.

Q Are there any specifications which coal is required to meet if it is going to be used in your boilers?

A Yes. We have a broad range of specifications. We do try to design the boilers so they will handle a fairly broad range of coal qualities. This does not mean that we can handle all coals in every installation of ours. We have certain types of boilers which would have difficulty in burning certain coals within this broad range of quality that we design for.

[608] Q Suppose you try to burn Fulton-Peoria or Springfield coal, let's say, in your boilers.

A We have units where we could have severe problems due to the ash fusion temperatures or the ash content or the moisture content in burning the fuel and carrying the capability of the plant.

Q Do you have any specific occasions in which the use of coal which did not meet your boiler specifications did cause such difficulties?

A We had a specific case last year, 1969, where, in trying to burn some coal from the West Kentucky areas, some spot coal, we did manage to shut down one of our units, and this is a costly thing. We had to get in and get it back in service again.

Q Were you required to shift to some other type of coal?

A Yes. We had to shift to a coal that would not cause those problems.

Q Mr. Wood, what, if any, effect does the combined ownership of United Electric and Freeman by General Dynamics have on the competition for Northern States Power Company's fuel business?

A We feel it would have a desirable effect. [609] We feel due to the reserve situation that in our particular case we would be benefitted.

Q Why is that?

A Well, when we look for long-range—in the long-range competitive picture, one of the big things is to assure ourselves of the proper reserve situation. We don't go into contracts with those or consider them competitive under this situation unless they have the reserves to back it up, and we can count on them down the road. So that when you combine reserves, this is going to make a better situation for us on a competitive basis.

[610] Q You say combined reserves. You mean of United Electric and Freeman?

A Yes.

Q Do you have any examples, again, of the ways this might prove beneficial?

A Well, we recently have entered into a contract with United Electric under which one of the features was to have the Freeman reserves backing up United Electric reserves so it made the package a competitive situation for us, and we were able to enter an agreement with them.

Q If United Electric had not had this back-up, would they have been in a position to bid for that portion of your business?

A Not for that portion of our business, no, sir.

Q Do you foresee any possible adverse effects because of the combination of Freeman and United Electric?

A No, we can't. We cannot envision any.

MR. KEMPF: No further questions.

THE COURT: You may cross examine.

* * * *

[612] CROSS EXAMINATION

* * * *

BY MR. FUTTERMAN:

Q But, as a general proposition, is it not true that as the coal comes up the river, you may assign it to one of your plants, depending on the reserve situation at that plant?

A No, sir. It is more a function of the rhythm of our unloading operation. I will have to explain it this way, too: In the summertime at three of our large stations in the Twin Cities area we are burning gas, natural gas. We burn large quantities of natural gas. So, we are not burning coal where it is a depleting thing. So, we have more or less a standstill situation where we could delay until fall, for example, taking coal in that particular station, even though its coal supply might look to be in jeopardy.

Q The gas that you consume in the summertime, that is interruptible gas, is it not?

A That is interruptible gas, yes. We have it available to us about seven months of the year.

Q As I understand it, your company, as well as distributing electricity, also distributes natural gas, is that correct?

A Yes.

Q The interruptible gas which you consume during the summer, is that supplied from your own [613] supplies or do you purchase that from another company?

A There is a portion that we receive from our own company in the St. Paul area, where we are the gas distributor, but in the Minneapolis area, where we have two of the three plants, we are serviced by the Minneapolis Gas Company, which is independent.

Q The gas that you consume from your own reserves, would you prefer to sell that to your firm rate customers, if you could?

A Will you repeat that question?

THE COURT: Read the question.

(Question read by the reporter.)

BY THE WITNESS:

A I'd have to say yes, if there were a need on a firm basis. There is a higher revenue factor in selling firm gas to residential type customers.

Q Because that provides a higher rate of return—

A It's a—

Q (Continuing)—or a higher profit.

It is true, is it not, that when you make a contract with a gas pipeline company, that you must take gas throughout the entire year regardless of whether or not you may have a demand from your own customers for [614] that gas?

A That's right.

Q That is really the reason why you consume the gas in your own boilers, you have to keep taking it throughout the summer months?

A This is not entirely true. There is a certain amount of revenue that accrues to the pipeline as a result of selling interruptible gas in the summertime that does eventually help the firm gas customers. Our gas rates in our area for interruptible gas are quite low, and we are only assured of gas during the period when there is absolutely no firm load or even other steps of curtailment. In our area we have maybe six different steps of curtailment based upon temperature. Our step that we're on is one where we are the very first ones that are knocked off when the weather changes, and we are the very last ones to come on. For that, having that inconvenience, we are afforded a good price, and this is the reason it is a competitive thing for us.

It's still, even at that low price, there is an incremental savings to the pipeline itself, which in turn is passed on to the customers in effect because it's a revenue addition.

[615] Q If you were to tell the pipeline company that you could not take the gas during the summer months, would you have to pay a penalty to the pipeline company?

A No. No, we don't. They are actively soliciting our business for this type of service, this type of sale.

[616] Q Has there been an increase in the market for gas for air conditioning units in the summertime?

A There has been a fair increase, right, in our area. If I may explain our gas situation, up in our area we have a tremendously high peak of natural gas use because of the severe winters. So this, in turn, gives quite a large valley, what you call valley in the natural gas man's language, which this valley is where we obtain our interruptible gas, so that we perhaps have more interruptible gas available in our area than you would have in other areas, due to this high peaking tendency.

Q Isn't it true that in 1968 you experienced a curtailment of interruptible gas supply?

A We had it; not in the Twin City area. We had more curtailment in some of the smaller communities where we use natural gas as boiler fuel, where their firm load in relation to the summer load is not as great. In other words, a less of a valley existed so there was not as much gas available to us, and as the summertime gas requirement increases, well, it pushed us off on this low interruptible step.

Q As a general proposition, interruptible gas is not available to you during the winter heating [617] season, is that correct?

A That is correct.

Q Is it not true that the gas turbine plants which you spoke of on your direct examination are peaking plants?

A Yes, they are peaking plants but our experience has been, with the load situation and the way it is going, right now, that we tend to have them on the line much more than we had ever planned, and this seems to be the trend, where they are used for peaking but then there is also a certain number of hours during the day now that we are actually carrying it for load-carrying purposes.

Q It is true, is it not, that Northern States Power has shut down approximately 19 hydro plants over the last

ten years because they were uneconomical to continue in operation?

A Yes, that is correct. We started out as a hydro company in the State of Wisconsin at the very early days of our company, and the units that we are shutting down in the main are these smaller, older units that were at a point where they required considerable maintenance, and now we are relying on our newer hydro developments with larger capacities to continue [618] on with the hydro increment of load.

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[620] Q You did not consider interruptible gas for either the Monticello plant or the two units to be built at Prairie Island, is that correct?

A We looked at natural gas for both of them on an interruptible basis, which would be natural gas coupled with coal in the wintertime.

Q Could you have fueled all three of those units exclusively on interruptible gas?

A On an interruptible basis?

Q Yes.

A No, we could not have.

Q Would it have been economically feasible to fuel all three of those plants with firm rate gas?

A No. No, it wouldn't. Firm gas in our area would be much too expensive.

THE COURT: Can you hear the witness?

MR. HEDLUND: I am having a little trouble.

THE COURT: Would you speak up just a little louder so all the counsel can hear you.

THE WITNESS: I'm sorry.

THE COURT: Thank you.

BY MR. FUTTERMAN:

Q Mr. Wood, just recently your company announced some additional plant expansion for 1976 to 1977, is [621] that not correct?

A Yes, that's correct. In 1976 we are going to put in a 600 megawatt or 600,000 kilowatt generating unit.

Q That will be coal fired, will it not?

A This will be a coal fired unit, yes.

Q Do you expect that these units will encompass some type of a sulphur dioxide emission control system?

A When we looked at this unit, and as we do all, we consider nuclear, oil, bituminous coal, sub-bituminous coal. In this particular case we are looking toward the west for low sulphur coal. Although we did look at the bituminous coal out of Illinois with the idea of putting in sulphur removal equipment and trying to match the cost up in a competitive situation between the western fuel, we feel that as time goes on and these—this sulphur removal equipment becomes available and practical, that the two coals can compete, but as it stands right now, the western fuel seemed to be the competitive choice, the low sulphur western fuel.

Q Where will that western coal be coming from?

A We have not decided or made any contracts [622] yet, but it will be either out of Wyoming or Montana.

Q Is it possible that if a feasible sulphur dioxide emission control system is developed, you would consider fueling the new unit with midwest coal?

A Well, here we have a timing problem because you have to start designing boilers well in advance of the unit. For a 1976 unit, we will have to start next year in making some final design decisions, and so we will not have the time to wait until we are assured that an SO₂ removal system would be available. At this stand, we would rather doubt that it would and that there would be one that we could put in.

Q At the present time isn't Northern States Power experimenting with a sulphur dioxide emission control system?

A We are involved with others in the Babcock and Wilcox SO program in study only.

Q You testified on direct examination, I believe, that your total coal burned will be cut by about 4 million tons in 1974. When the new unit comes on line in 1976, how many tons of coal will that be consuming annually?

A Western coal with its relatively low heating value, it will consume about 2.5 million tons a year.

[623] Q How many units do you anticipate will be encompassed within the next coal fired expansion?

A I don't quite understand your question.

Q Are you just going to have the one 600 megawatt unit?

A Yes, sir, we have the one unit, the only one announced.

Q That one unit would consume the 2.5 million tons of coal?

A That is correct.

Q On your direct examination you testified about, I believe, your concern with air pollution. Is it not a fact that the air pollution ordinances enacted by Minneapolis-St. Paul area do not restrict the sulphur content on coal consumed?

A That is correct, not on the coal going into the boiler. They have the restriction on the SO₂ level at ground and also on the particulate matter going out the stack.

Q In order to control the SO₂ ground level emission, you can construct a very high smokestack, can you not, so that there is a wider dispersal of the SO₂ emission?

A That is correct.

[624] Q You have, in fact, done that at some of your plants, have you not?

A We have a high stack on the King plant which is our last new fossil plant, that's right, and we are in the process of adding a higher stack in the Twin Cities area.

[625] Q In order to control the particulate emission, you can install electrostatic precipitators on your plants, can you not?

A That's correct.

Q Have you done that at certain of your plants?

A We are in the process right now in one of our Twin City plants to do this, to add both the tall stack and a new precipitator.

Q This will enable you to continue to burn coal with a relatively high sulphur content, is that correct?

A Yes, that's correct.

I might say at this point, however, that in conjunction with the tall stacks and the precipitators, we are trying to blend the Western fuels, which are most readily accessible to our area, in these plants so that we do not only meet regulations, but we improve on the regulation.

Q You are blending the Western coal with coals you purchase from Illinois—

A Right.

Q (Continuing.)—and West Kentucky?

A That's correct.

Q Is it not true, Mr. Wood, that some of the Western low sulphur coal which you have purchased was [626] not purchased specifically for complying with air pollution ordinances, but rather was purchased in order to fulfill coal requirements for some of your plants?

A Yes, that is right. We are probably one of the closest large users of coal to this new area in the West, and we have burned lignite in our North Dakota plants for years, and we are just trying to expand on this new source of fuel.

Q Some of the Western fuel that you are purchasing would be burned in your North Dakota plants?

A We are not now planning to do so, no.

Q Is it not also true, Mr. Wood, that in recent years you have been able to locate your generating facilities further away from the population centers which these facilities serve?

A Yes. We are, as most utilities, moving our generation out away from the metropolitan areas, as well as our transmission line networks.

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[631] BY MR. FUTTERMAN:

Q Mr. Wood, do you anticipate that high sulphur coal produced in Illinois will continue to be burned both by your utility and other utilities?

A We are quite optimistic that within the next three to four year, with all the effort and money being spent in looking at sulphur removal equipment, there will be one that comes out to be the bellringer, and that the Illinois bituminous coal with its relative higher sulphur content than the western coals will be just as competitive as it is right now, so that you will have the competition and also the reduced sulphur emission.

Q In regard to your Monticello nuclear plant, that is about 40 miles northwest of Minneapolis, is it not?

A Yes. That is correct. Right on the Mississippi River.

.

[637] Q Mr. Wood, isn't it a fact that the price Northern States Power Company pays for coal is determined by the BTU value of the coal and the transportation charges?

A Yes, it is. That is correct. We do, however, when we are analyzing coals, have certain adjustment factors that we apply to the delivered cost that relate to how they will be utilized in our boilers, such as efficiency or ash-handling characteristics, the sulphur, this type of thing, where we have a direct operational cost penalty or benefit by burning different coals.

Q You have on occasion purchased coal from the Little Dog Coal Company, have you not?

A Yes, we did, several years ago.

Q That is neither the Belleville or the Southern Freight Rate Districts, is that correct?

A No. That is the Springfield area, I believe, the southern area of the Springfield area.

Q Mr. Wood, you testified on direct examination, I believe, that the Pathfinder Plant of Northern States Power was originally scheduled to be a nuclear plant.

A That is correct.

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[657] BY MR. FUTTERMAN:

Q Mr. Wood, as a general rule, have there been greater delays associated with the construction of nuclear plants than with the fossil fuel plants?

A There is a tendency to be a greater delay in the last few years. We are not experiencing this ourselves to the same degree as some of the more publicized units have. I believe we have probably benefitted from some of the things that have gone on before. So, our Monticello plant we are looking at perhaps being in the three-months delay category.

Q Mr. Wood, would freight rates from the McDonough-Schuyler County area be more favorable to Northern States Power than freight rates from the Fulton County area? Again, if you would care to refer to the map, you may do so.

A I believe, if you are looking at a barge movement, they perhaps could be, where you could move [658] the

coal directly to the Mississippi. Out of Fulton County by barge you must go down the Illinois River and come back up again which is a more costly movement. It would be difficult to say at this stage because you need—a big movement of coal is needed to generate a good economic situation at a dockside. It isn't just a matter of moving the coal to the river and then dumping it. It's an organized—you have to develop a sound plan and get in with large tonnages and unit train concepts, so it is a little hard to generalize on the situation.

[659] Q Mr. Wood, is it not a fact that utilities have not always purchased coal under long-term contracts?

A That is right. We purchase on a stock basis occasionally to fill up the valleys we have in our fuel program.

Q Has there not been a trend toward long-term contracts due to the fact that coal demand has increased so as to create a seller's market?

A This perhaps has happened in other areas; not in our area it hasn't. Our desire for long-term coal contracts is still the same. As I mentioned, we burn considerable amount of natural gas in the summertime, and we must have a sound enough position in our coal purchase program so that we can jump in and take over in case either one of the fuels is not available to us, and we also think of our distance. We are one of the furthestest large utilities from its source of fuel, and we feel that the term contracts in both coal and transportation give us a certain security on the long-term basis.

Q Is it of benefit to your company to have a number of coal suppliers soliciting your business?

A It's is a definite benefit to have a number of [660] sound, reliable, suppliers, yes. There is not distinct benefit in having a great number of suppliers, but to have the type that give us the foundation for a sound fuel program, yes.

Q You stated, I believe, that the Northern States Power entered into a contract with United Electric whereby Freeman would provide back-up reserves, is that correct?

A Yes, that's correct.

Q When United Electric ceases to supply coal to North-

ern States Power on this contract, then is it true that the Freeman reserves, which may be used, would be used for the same purposes and in the same generating facilities?

A Yes, that is correct, generally speaking. We have many units, as I stated before, in these generating facilities that can receive the barge coal, and we always put the coal—if we can—we will try to put the coal in the best unit possible, providing we can keep this flow moving. We have a set of plans where a checkoff list as coal comes up the river, but the first one, of course, is to keep the flow moving in a good rythm. The second one is to try to get the coals in the units that they would be best [661] designed for.

So, you might not be able to put them in or you might not want to put them in the exact same units, but it would follow in the same pattern.

Q Sometimes you cannot always put the coal into the unit which it is best designed for, is that not correct?

A That is correct.

Q You stated that your ability to use nuclear fuel assists you in controlling the cost of coal. Is it not a fact, Mr. Wood, that competition among your coal suppliers has not been able to control the cost of coal to Northern States Power?

A May I have that question again?

THE COURT: Read the question.

Q (Read by the Reporter.)

BY THE WITNESS:

A Certainly competition between coal suppliers is a big factor, but I believe overriding this, which sets the overall competitive picture, is the alternate fuel competition. There is competition among all fuels as well as among coal suppliers.

Q Mr. Wood, when did you arrive in town?

A I arrived yesterday afternoon.

[664]

REDIRECT EXAMINATION

BY MR. KEMPF:

Q You also referred to the fact that these peaking stations are used to a large extent within your system. During my direct examination you referred to the fact that your newly announced gas turbine station will be 300,000 kilowatts. Is it not a fact that that plant size exceeds many of your older coal burning stations?

A Yes, that's true. Our next to the last fossil unit we put in was a 250,000 kilowatt machine, which is a relatively new machine, and here's one package of gas turbines that exceeds that.

Q Mr. Futterman asked you the question of whether or not the new Monticello nuclear station would be a base load station and you answered him that it would be. He then asked you that because it is a base load station, would that not reduce the amount of oil and gas burned at your other station, and you said that for about a year period it would.

My question to you is: would this affect coal along with oil and gas?

[665] **A** Yes, it does. It would affect coal immediately, and, due to the inherent lower incremental cost of a nuclear plant, you will tend to operate it more than you would a corresponding fossil plant, so it would have an additional effect on the coal use.

Q You referred during the course of your cross examination to a 600,000 kilowatt coal-fired station which is planned for around 1976, and you indicated to Mr. Futterman that the coal to be burned in that plant would be coming from the western portion of the United States, and I think it was clear during your cross examination that this is low sulphur coal, is that correct?

A That is correct, low sulphur bituminous coal.

Q Just so that the record is clear, how would you characterize the sulphur content of the coal from the Belleville region?

A Insofar as magnitude or in term? We would classify this as a high sulphur fuel.

Q You discussed electrostatic precipitators during your cross examination. Those do not concern themselves with the removal of sulphur, do they?

A No, they don't, although I think we must say [666] that part of the reason for adding precipitator capacity is that the lower the sulphur is actually works against the use of a precipitator. The lower the sulphur is in fuel, the harder it is to collect the ash, so you must increase the capacity of your ash collection system as you decrease the amount of sulphur in the fuel.

Q I see.

So, as you solve one air pollution problem, you make it harder to solve the other one.

A You create another one.

[667] Q You referred to both high stacks and electrostatic precipitators as the possible additions to your plants, which would enable them in some cases to continue burning coal.

My question to you is: are these low cost or high cost items?

A We feel that they are relatively low cost items in comparison to other things that we are doing.

Q Such as?

A Well, such as, well, in new plants, figuring, trying to anticipate SO_2 removal costs and things of this type. This is the best thing to do, for example, at an existing plant. In an existing plant, you cannot just add all of this equipment and expect to make it work.

Q I see. I am sorry. I did not mean to interrupt you.

A (Continuing.) This putting in a stack and precipitator, you are able to do this with minimal disturbance to the plant itself, and yet have part of the desired objective.

Q So, they are low cost in relation to the probable cost of future sulphur removal processes?

A That is correct.

[668] Q In an absolute dollar value sense, are they low cost or high cost items?

A Well, in the case of our conversion of the Riverside Plant that I mentioned where we have announced putting a facility, we are looking at a \$2 million expenditure for a combination of stack and increased precipitation.

Q That is at one facility?

A At one facility alone.

Q Is this increased cost of existing technology and the probable cost of future technology another factor considered in the over-all analysis of deciding what fuel and what type of station to install?

A That's correct. This was a factor in the selection and analyzing of our 1976 unit.

Q Mr. Futterman raised with you the subject of receipt of shipments at some time in the past from the Little Dog Coal Company. Do you know whether that company is presently in operation?

A As I understand, they are not in operation now.

Q Did you buy any long-term coal from them?

A No, sir, it was strictly a spot purchase over a couple year period.

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[669] BY MR. KEMPF:

Q Do you feel that your experiences with the Pathfinder nuclear station prior to its conversion [670] to gas were beneficial to the company in its over-all planning of future nuclear sites?

A We can definitely say that it was. We probably wound up with one of the best trained organizations to fill spots in our plants of any company in the country, and we gained experience in licensing matters and dealing with the various departments in the AEC, so it was a definite benefit.

.

[671] Q Is it not a fact that if the breeder [672] development which you and others are participating in is, in fact, developed, that it will have a definite impact on the question of the supply of uranium for the future?

A Oh, yes. That's very true.

Q My final question, Mr. Wood.

Mr. Futterman asked you about the importance of having coal companies competing for your business, and you said that you thought it was important to have sound companies. I do not mean to short-circuit or summarize your answer, but I believe the gist of it was that it was

important that you have sound companies to be in a position to bid for your business.

My question to you is: would you consider United Electric Coal Companies standing alone at this time to be such a company?

A Not with the reserve situation the way it is. We ~~would not feel that way.~~ As our contract shows, in our long-range thinking, we must throw in another factor of reserve reliability.

MR. KEMPF: I have no further questions, your Honor.

THE COURT: Is there any recross?

MR. KEMPF: Oh, your Honor, I do have one.

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[676] RE CROSS EXAMINATION

BY MR. FUTTERMAN:

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Q Mr. Wood, isn't it a fact that the breeder reactor is at least 15 to 20 years off in the future?

A Yes. We are looking in the mid-1980's before we would have a unit that we would look at for commercial purposes.

Q Isn't it also a fact that the estimate as to when a commercial breeder reactor will be available has just been pushed back by the Atomic Energy Commission?

A I am not aware who has done it. I have been reading, and in my reading I take it that we have a period of delay here. But it is not a significant period. It is consistent with the reserve situation and what is going on, we feel.

Q Isn't it a fact that the longer the breeder reactor is delayed, the more critical the problem of a potential shortage of low cost uranium becomes?

A Yes. But in commercial circles when you start getting close to the bottom of the barrel, somebody comes up with a new scheme. What I am saying is you watch this, and as soon as it becomes quite apparent that we do have a problem in uranium, I am sure the breeder program would speed up naturally. There has been

tremendous success in 1969 in finding [677] low cost uranium, so this perhaps could be one of the factors in delaying a little of the thinking and money spending for the breeders. It becomes an economic thing.

[678] Q Mr. Wood, your company will continue to burn coal from the Belleville and Southern freight rate districts, will it not?

A Yes. For as long as it will remain competitive and available enough in supply so that we can count on it for long-term purposes.

Q That is generally high sulphur coal, is it not?

A Yes.

Q Mr. Wood, you testified that United Electric alone would not be a sound company because of its reserve position. How do you know about United Electric's reserves? Where did you get that information?

A I think just information that we gathered in the normal course of fuel procurement practices, in talking to the operators, in hearing about operators from others. It is just a matter of gathering information in the circle of business.

Q You never examined any of the reserves books of United Electric—

A I don't recall. I might have, but I just don't recall now.

Q Would most of the information you received about United Electric's reserve have come from other parties?

[679] A Not necessarily, no. This is a marketing judgment you make, and there are other companies that have showed reserves and perhaps United has with us. But it is our feeling that this is the position, and so this is the reason for our concern.

Q Mr. Wood, has United Electric ever offered to supply you with coal from the Perry County area in the Belleville district other than from the Fidelity coal mine?

A To my knowledge, no.

Q Assume that United Electric had a reserve field of 30 or 40 million tons of strip coal reserves which has not yet been developed; would it still be your position that United Electric is not a sound company and lacks reserves?

MR. KEMPF: I am going to object, your Honor, unless he specifies where this is located.

THE COURT: All right. Reframe your question.

[680] BY MR. FUTTERMAN:

Q Assume United Electric has a reserve tonnage of 30 to 40 million tons in the vicinity of the McDonough-Schuyler County areas. Would it still be your position that United Electric is not a sound company because it lacks reserves?

A Yes. It could very well be my position. You have to know the cost of mining that coal and to see if it would fit into the picture. Perhaps it would not be competitive in our market. So even with reserves as far as Northern States Power is concerned, they would be of no use or would not be competitive over the long pull to us.

Q But those reserves might be of value to some other utility, isn't that true?

MR. KEMPF: I am going to object, your Honor. This witness is being asked about his utility.

THE COURT: The objection is sustained.

MR. FUTTERMAN: Excuse me just one minute, your Honor.

THE COURT: All right.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

* * *

[683] MR. FUTTERMAN: Your Honor, at this time I would move to strike Mr. Wood's responses in regard to United Electric's reserves on the ground of hearsay.

THE COURT: It is not hearsay. It is investigation looking at books, and so on. The motion is denied.

MR. FUTTERMAN: No further questions, your Honor.

THE COURT: The Court would like to ask one or two questions.

This power pool that you spoke of, when did it come into existence?

THE WITNESS: This would have been about four years ago.

THE COURT: What companies are in that?

THE WITNESS: Just to name a few: Commonwealth Edison, Union Electric, Wisconsin Electric Power, Wisconsin Public Service.

THE COURT: That is primarily in the middle west?

THE WITNESS: Yes.

THE COURT: Are there any figures available that you know about as of the date that this power pool came into effect, which is four years ago, as to the percentage of gas, oil, coal and atomic energy that were used as fuels in this group?

THE WITNESS: This group, which is called MAPP, [684] or Mid-Area Power Planners, is a nationally recognized group, and they have published data. I am not aware of that, but I know they have published it.

THE COURT: Is any part of that in the record?

MR. KEMPF: I do not believe it is, your Honor, but we can attempt to supply it.

MR. FUTTERMAN: Your Honor, I might say that if Mr. Wood would be able to give us the names of the utilities, all of the utilities involved in this group, we have an exhibit in evidence entitled "Steam Electric Plant Factors," which lists for each individual utility total gas consumption, oil consumption, and coal consumption, and I believe nuclear consumption.

THE COURT: And that covers it?

MR. FUTTERMAN: Yes.

THE COURT: For what period?

MR. FUTTERMAN: We have the 1968 edition, and I believe that would cover it for the year 1967.

MR. KEMPF: We also have it for 1969, and I believe a couple of the deposition exhibits trace it further on.

THE COURT: Is there anything projecting this—their estimates are I believe to the year 1980. Is there anything projecting it to that period?

MR. KEMPF: I do not think there is a specific [685] time that far down the road. There is one section in each edition that lists announced plants for the future in terms of gas, turbine, oil and atomic energy.

MR. FUTTERMAN: And coal.

MR. KEMPF: And coal.

THE COURT: Then that answers my question. Thank you. I have no question on that.

MR. KEMPF: We have no other questions.

THE COURT: Thank you, sir. You are excused.

(Witness excused.)

[686] THE COURT: You may call your next witness.

MR. HEDLUND: The defendants call Mr. Davis.

A. H. DAVIS,

called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Will you please state your name and occupation?

A My name is A. H. Davis. I am the president of Central Illinois Light Company.

Q This came as somewhat of a surprise to me, Mr. Davis. When were you made president of Central Illinois Light?

A March 26th.

Q Of this year?

A Yes.

Q My congratulations to you.

A Thank you.

Q Central Illinois Light Company is frequently referred to as CILCO, is that correct?

A Yes.

Q C-I-L-C-O?

A Right.

[687] Q Would you please describe briefly your education and business experience.

A I received the B.S. and M.E. from Bradley University in 1948, at which time I started to work for CILCO. From there on in, I worked through various construction and power production responsibilities. In 1960 I was made general superintendent of electric pro-

duction and transmission. In 1967 I was elected vice president of operations. In 1968 I was elected to the board of CILCO. More recently I was made president.

I am a director of the University National Bank of Peoria, a director of the Proctor Hospital of Peoria and a commissioner of the Public Building Commission of Peoria.

Q During your experience with CILCO were you familiar with the coal buying practices of the company and the fuel purchasing policies?

A Yes. As vice president of operations that was one of my responsibilities of overseeing the coal purchasing.

Q Mr. Davis, I wonder if I could ask you to indicate on Defendants' Exhibit 144 the service area of CILCO? [688] A We are in the central part of Illinois, the blue color, No. 19.

Q Would you please describe briefly the facilities and operations of CILCO?

A CILCO, as I said, is located in the central portion of Illinois. We are divided into a Peoria Division and a Springfield Division.

Our area of service covers about 2,500 square miles. We are a combination company, providing both electricity and gas.

We have an electrical capability of about 863 megawatts, and we have a gas system of some 2,200 miles of main which services both areas. We serve about 100 communities. These communities in our area have a population of about 500,000. We have 130,000 electric customers and about 42,000 gas customers. This past winter we had a gas peak of 359 million cubic feet.

[689] Q In terms of electrical generating capacity, how does CILCO rank within the state of Illinois?

A We are the fourth largest electrical utility in the state.

Q Who would be the largest?

A Commonwealth Edison.

Q Would you please describe the characteristics of your electric generating stations.

A We have five electric generating stations. The smallest is a gas turbine station consisting of two 16

megawatt gas turbines. The next station and our oldest is our Liberty Street station, located in the city of Peoria, which we are in the process of retiring.

Q If I may interrupt you, why have you decided to retire that station?

A Well, the air pollution control regulation kind of pushed the economics of operating this station—it is an old and rather obsolete station and rather small, so the economics of putting on air pollution regulation control equipment just wasn't economically feasible.

Q What control equipment would you have had to put on?

A Particulate control. Precipitators.

Q Please continue with your description of your plants.

[690] A Our next station is our Keystone station, which we recently purchased from the Keystone Consolidated Industries.

Q Where are they located?

A They are located just south of Peoria in Bartonville. We are converting that station to gas or half of it to gas and the other half is going to be put on cold standby.

Q Did you say cold or coal?

A Cold.

Q C-o-l-d?

A Right.

Q Would you please tell me why you have converted this station to gas?

A We can more economically serve Keystone from our nearby generating facilities, so we are shutting down the station to utilize our more economical stations.

Q Are you, however, keeping a portion of that plant operable on gas?

A Yes. And that will be used to serve the steam requirement of Keystone.

Q Would you continue, then, with respect to your other facilities?

A We have the R. S. Wallace station in Peoria, [691] which has a 359 megawatt capability. There we have 10 boilers, 4 of which have been converted to gas. We are now converting 2 others to gas to comply with the air pol-

lution regulations. We cannot put electrostatic precipitators on these boilers economically.

The last four boilers will continue to burn coal. They do have electrostatic precipitators.

Our E. D. Edwards station, which is located just south of Bartonville, is approximately 400 megawatts in size. It is coal burning. We have precipitators on the boilers, and we currently are adding a 350 megawatt unit to the station, which will burn coal.

[692] Q As I understand it, your largest station at the time without regard to this addition, is your existing Edwards Plant which has a capacity of 400 megawatts?

A That is correct.

Q Have you in the past or in the recent past had another generating station or a generating station outside of the Peoria area?

A Yes. We had a power plant in Springfield, Illinois, a smaller plant, that generated electricity and also provided steam to the City of Springfield, as does our Liberty Street Station. We serve some 300 customers in Peoria, but we have since retired that Springfield station.

Q So that it is the fact that at the present time you are not burning any coal at all in Springfield, is that correct?

A That's correct.

Q Do you recall, oh, say in 1966 or in 1967 who was serving the Springfield Plant, which coal suppliers, if you recall?

A The Springfield Plant was served by Freeman.

Q From which mine?

A I believe it was the Crown Mine.

[693] Q Do you know what freight rate, district that would be in?

A That would be in the Springfield Freight Rate District.

Q Other than the addition being constructed at the Edwards Plant, what plans have you for further additions to your generating capacity?

A We currently have under consideration a 400 megawatt unit to go into service in either 1975 or 1976 at a site that we have not determined as yet.

Q What fuel is this station likely to use?

A We would prefer the station to use coal. We would make an economic analysis of the oil, gas and other fuels before we made that determination absolutely.

Q Will air pollution considerations enter into your ultimate decisions as to the fuel in that station?

A Well, we would have to study the effect of the air pollution regulation at that time and consider the economics of the various fuels and the cost of providing control equipment and then determine just what fuel we wanted to use.

[694] Q Is there a possibility that this station or unit to which you have just referred or subsequent stations built by CILCO might use nuclear energy?

A We have studied the nuclear energy field, and to date we are installing units of such a size that it is not economical to install or think about installing a nuclear unit. For the most part, the size requirement is about 750 or 800 megawatts, especially in our area where coal is relatively cheap.

Q Approximately how many tons of coal per year does CILCO presently consume?

A During the year 1969 we consumed approximately 1,600,000 tons of coal.

Q Will you please tell me the manner in which CILCO purchases its coal?

A Well, for many years we have purchased coal on long-term contracts of five to twenty years.

Q What was your most recent request for bids from coal producers in terms of tonnages and lengths of time?

A For the unit that is going into service in 1972, we requested bids from the coal producers for twenty years at a million tons per year.

Q In other words, that was a request for 20 [695] million tons of coal?

A That's correct. We are actually buying reserves.

Q Why do you choose to purchase coal under such long-term contracts?

A Well, we are spending \$50 million for a coal burning unit. This unit is a large portion of our total capability, and we would like to assure ourselves that we have the fuel for at least 20 years.

Q To what extent have you presently contracted for—may I rephrase that? To what extent have you presently bought all of your coal requirements for your existing stations?

A We currently have our coal requirement provided for, for our existing station and the units going into service in 1972, for a period of 20 years.

Q For a period of 20 years?

A Yes.

Q Do you purchase coal on the so-called spot market?

A Very rarely. The spot purchase of the coal has little interest to us. Our coal for the most part comes from the Peoria-Fulton County freight rate district. If we spot purchase coal it is usually out of that [696] district and we have to pay a higher transportation charge.

Q If the generating station or the addition planned for 1976, that is the generating station—if the generating station planned for 1976 ultimately utilizes coal, what would your expectations be with respect to the source of coal supply for that station?

A We would certainly hope to find the coal in the Peoria-Fulton County area. However, the reserves in that immediate area are diminishing. Other than that, we would hope to find coal just out of Springfield. Our preference would be the Peoria-Fulton County area, because of the transportation cost. For the most part, the coal has about a 30-mile haul to us. So staying right in that freight rate district is very beneficial to us.

[697] Q But you expect for this station to be supplied by one or more than one supplier?

A We would prefer one supplier so we could have the transportation economies. However, if the reserves were not available to one supplier, I suppose you could consider two. But one supplier is by far the best.

Q Can your coal fire generating plants consume coal produced anywhere in Illinois?

A No. I wouldn't go so far as to say you could use coal that was produced anywhere. We could fire coal that is produced within a certain chemical range, ash composition, fusion temperature and other characteristics, but

beyond that, if you don't have that chemical range, you get into trouble.

Q Are your boilers designed with a particular coal in mind?

A Our boilers are designed to utilize No. 5 and 6 seam coal out of the Peoria-Fulton County area.

Q Do you recall that CILCO received a questionnaire, a subpoena questionnaire, sent out by the court, do you?

A Yes.

Q If the characteristics of the coal burned [698] are so important, can you explain why in answering the subpoena questionnaire issued by the court an indication was given that there were no specifications as far as CILCO was concerned as to coal size, ash percentage, moisture content and so forth?

A We had been burning the Peoria-Fulton County coal for many, many years, so we are very familiar with the No. 5 and 6 seam characteristics. We do indicate, and perhaps it was an oversight on our part if we didn't indicate it, we do indicate the size and that the coal is washed. So all in all, when we purchase coal, we indicate this seam, the mine and the sizing of the coal and that it be washed.

Q In your judgment does coal compete with other forms of energy as a fuel source for the generation of electricity?

A Oh, yes. Coal is competing with gas and oil, and in our Peoria area we have four customers that are seeking to convert to gas their industrial power plant, which they produce both steam and electricity in. We have one customer that is interconnected with us, who operates in parallel with us, that has generation of 16,500 kilowatts. We don't expect them to continue to burn coal. This is the Corn Products Corporation in Pekin.

[699] Q The Pekin plant of Corn Products?

A Yes. We recently had the American Distilling Company in Pekin make a contract with us to purchase gas to convert their coal-burning facility to gas.

Q Which facility of American Distilling?

A That is also in Pekin.

In Peoria we have the Hiram Walker plant, which recently signed a contract with us for 5 million cubic feet of gas per day to start the conversion of their facilities.

Q From what fuel to what fuel?

A From coal to gas. We are interconnected with Hiram Walker, and all these companies. We serve a portion of their electric requirement already. The American Distilling and Corn Products plant. And then we have the Standard Brands plant that we furnish up to 50 percent of their electrical requirement. They are negotiating with us currently to convert their coal-burning facility to the gas.

So I would say the industrial use of coal in the very near future will be converted in our area to gas.

Q What about inter-fuel competition with [700] respect to electric utilities? Do you believe coal competes with other forms of energy?

A Yes. Very definitely. We have gas turbines. There is oil being used. There is nuclear fuel. There is gas. Just about all of the types of fuel are being used in competition with coal.

THE COURT: Would now be a good time to take a break?

MR. HEDLUND: Yes, your Honor.

May I inquire when we will be adjourning today?

THE COURT: 12:30.

MR. HEDLUND: I hope to make my examination short.

THE COURT: All right. Recess.

(There was a short recess after which the following further proceedings were had herein, to-wit:)

THE COURT: Are you ready to proceed?

MR. HEDLUND: Yes, sir.

THE COURT: You may.

BY MR. HEDLUND:

Q Mr. Davis, in your judgment, what is the future outlook for the utility market for coal?

A I would think the near term market for coal [701] would be excellent. There is quite a number of fossil fuel

plants going into service in the near future, so it would look to me that the production of coal would out of necessity increase in the near term.

Q What about the long term?

A I would think that the long term use of coal would be diminished. The air pollution regulations, I think, are going to play a very important part in the economics of using coal, and the disposal of ash, the disposal of sulphur, and that sort of thing.

However, the future for coal as a hydrocarbon through liquification or gasification, should be excellent.

Q How long have you known of the relationship between Freeman Coal Mining Corporation and the United Electric Coal Companies?

A I believe it was in 1960 that John Morris informed us that Freeman had a number of people on the board of directors of United and Frank Nugent was the Chairman of the Executive Committee. Since then, we have considered Freeman and United to be affiliated companies.

[702] Q Since 1960 up to the present time, could Freeman and United Electric, had they been independent, compete with each other for the coal business of CILCO?

A No. Prior to 1968 United provided all of our coal in the Peoria area. Freeman provided the coal for our Springfield plant. Since 1966, we have talked to United about their reserves in Peoria-Fulton County area. We had noticed that the reserves appeared to be diminishing, and at that time United mentioned the reserves of Freeman in the Springfield area. In 1968 we consummated a contract with United in which the reserves of Freeman were used to back up the term of the contract, possibly two years. The term of the contract was twenty years. They said that they thought that they had the coal reserves in the Peoria-Fulton County area for at least 18 years, possibly the full term. So Freeman was used to back up those reserves at the same cost per million BTU in the Peoria area.

So, if in the last two years coal has to be shipped from Springfield freight rate district, we will receive the coal in Peoria at the same current rate.

Q Up to, say, 1967 or prior to the present time were producers in the Springfield freight rate district [703] able to compete for the business of your Peoria area plants with producers in the Fulton-Peoria freight rate district?

A Historically we have used the Peoria-Fulton County freight rate district as a transportation base. All of our attempts to look at other areas for the most part included additional transportation costs.

Q I ask again were producers in the Springfield freight rate district able to compete for your business?

A No, sir, they were not.

Q What effect has there been, if any, on CILCO arising out of the common ownership and control of United Electric and Freeman, if you know?

A Well, considering our long-term contract with United, I would say the effect has been beneficial. We sought contracts from the coal producers in our area and the United contract was the only one that was forthcoming. We did have an approach by Humble to provide us coal but this was so scanty with information that when United offered us this contract, we accepted the contract.

Q Can you conceive of any potential benefit to CILCO that might follow from the divestiture of [704] General Dynamics' ownership of United Electric?

A Considering the location of our plants and the location of United Electric and the location of Freeman, I can't conceive of any possible benefit to CILCO from United and Freeman being required to divest.

[705] Q Has Central Illinois Light Company been engaged in merger discussions with other utilities?

A Yes, we have been. We have been engaged in merger discussions with the Commonwealth Edison Company and the Illinois Power Company. These discussions were terminated because the offers in the opinion of CILCO and our consultants did not adequately compensate our shareholders.

Q During those negotiations did either Commonwealth Edison or Illinois Power make reference to any

fuel cost advantage, that might follow should the merger negotiations have been successfully concluded?

A Yes. In particular the Edison company talked about the future of nuclear energy. The Illinois Power Company, having lower fuel costs in Southern Illinois, thought perhaps they would have an advantage.

MR. HEDLUND: That is all I have. You may inquire.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SIMS:

Q Mr. Davis, when was your Edwards Plant constructed?

A Our Edwards Plant was first constructed in [706] 1960. The initial unit went into service in 1960.

Q What was the installed generating capacity of that unit?

A 125 megawatts.

Q How many boilers were associated with this particular unit?

A One boiler.

Q What fuel has that boiler consumed?

A Coal.

Q Would you consider switching that boiler to gas or oil?

A Well, under present conditions we would not consider it. However, the future air pollution control regulations might force us to consider it.

Q If it was a matter of a price, the lowest price fuel, would you consider switching to gas?

A No, sir.

Q You distribute, CILCO distributes, gas, is that not true?

A Yes.

Q What is your lowest firm rate price for gas?

A Well, we have an interruptible rate of 36 cents per million BTU's.

Q That is an interruptible rate?

[707] A Yes, sir.

Q What is your lowest firm rate price for gas?

A Our lowest firm rate is about 45 cents. I had better go back and explain this. I am giving you the average costs to our customers for the year 1969. Now, the rate to an individual customer could be higher or lower than that, depending on their usage.

Q What is your average cost per BTU for coal at the present time?

A We purchase coal currently approximately 27 cents per million BTU's.

Q When was the next unit constructed at your Edwards Station?

A The next unit at the Edwards Station went into service in 1968.

Q You stated on direct, I think, that this unit consumed coal?

A Yes, sir.

Q Would you consider switching this unit to gas or oil?

A Just under the same basis that I stated previously.

.

[712] Q And you burn gas at the interruptible rate?

A That is correct.

Q At this unit?

A That is correct.

Q Is it necessary for you to burn this unit when interruptible gas is not available?

A When interruptible gas is not available, for the most part we attempt not to run it or we burn coal on it.

Q Coal being more economical than the firm rate gas?

A That doesn't have any particular bearing on it. We are trying to fight the air pollution problem. We have mechanical-type precipitators. Due to the public pressure we attempt to burn gas.

Q So when you burn gas in this unit, you are not choosing a fuel from an economical standpoint. You are choosing a fuel, as you say, because of air pollution concerns.

A That's correct.

Q When did you construct the next unit at the Wallace Station?

A The next unit went into service in the latter part of the 1930's.

[713] Q How many boilers are associated with this unit?

A That is one boiler and one turbine on a common header again.

Q What is the installed capacity of this unit?

A That unit, I believe, is a 35 megawatt unit.

Q What fuels have you used initially?

A We used the same fuels on this boiler as we did on the previous boiler—coal initially, and then, when we got into the air pollution considerations, we switched to gas as an auxilliary fuel.

Q When was the next unit constructed at the Wallace Station?

A The next unit went into service in 1948.

Q How many boilers are associated with this unit?

A There were two boilers associated with that unit. That particular turbine had a 45 megawatt capacity with two boilers.

Q What was the fuel history of this boiler?

A We have burned coal on that particular unit, those two boilers, since they went into commercial operation. On this particular unit, we have electrostatic precipitators, so we don't have quite the air pollution problem we had on the previous boiler.

Q Even installing electrostatic precipitators [714] did not make the use of gas more economical than burning coal? Let me rephrase it.

You do not have to put an electrostatic precipitator on a unit burning gas, is that correct?

A That is correct.

Q The fact that you had to install electrostatic precipitators on this unit did not make the gas more economical than coal, did it?

A That's correct.

Q When was the next unit in at the Wallace Station constructed?

A The next unit went into service approximately 1952.

Q What was the installed capacity of this unit?

A This unit was a 72 megawatt unit with one boiler.

[718] Q Mr. Davis, I would like to read to you a paragraph or two from your 1969 Annual Report as a preliminary question.

THE COURT: Is there an exhibit number, Mr. Sims?

MR. SIMS: No, sir, there is not.

THE COURT: All right. Do you intend to have it identified, in that you are reading from it?

MR. SIMS: No, I was simply going to read it and ask him if that was, in fact, true.

THE COURT: All right.

BY MR. SIMS:

Q (Reading) "Mounting evidence indicates that the natural gas industry is not finding sufficient new reserves to keep pace with the rapidly increasing demands. Many pipeline companies are now finding it difficult, if not impossible, to develop new gas supply expansion programs. Though the exact cost of this dilemma is not readily ascertainable, there is increasing contention by some authorities in industry and government that well-head prices in recent years have been too low and, consequently, have resulted in the present unsatisfactory level of exploration, [719] development and production."

Is it not true, Mr. Davis, that because of this concern about the supply of natural gas that CILCO is expanding its underground storage facilities at the present time?

A Yes, we are expanding our underground storage facilities.

Q Is it not also true, Mr. Davis, that you are having trouble simply supplying the firm rate customers with natural gas?

A No, sir. We had more than sufficient gas supplies during this past year to serve our firm rate customers. We are expanding our gas storage field to assure ourselves next year that we will have the same capability. At the same time we have a requisition or a request in the Panhandle to further assure this.

Q Mr. Davis, do you expect gas prices, either inter-

ruptible or firm, to approach the price of coal in the near future?

A To approach the price of coal? No, I wouldn't think that.

Q What price per million BTU do you pay for oil?

A We purchase oil as an ignition fuel. It's [720] a refined oil and we pay about approximately 70 cents per million BTU.

Q Is it not true, Mr. Davis, that the price of coal has been significantly lower than gas or oil for the last ten years at least?

A Oh, yes.

Q You made studies, or CILCO made studies, did they not, concerning CILCO's average cost in connection with a proposed merger with Commonwealth Edison?

A I don't understand your question. The average cost of fuel?

Q Yes, at the CILCO system.

A We have kept track of the fuel cost trends of the electric utilities in Illinois for a number of years.

Q But, did you not make a specific study of the fuel cost of CILCO in connection with the Commonwealth Edison's proposal to merge?

A Oh, yes. We looked at our fuel cost.

* * * *

[724] BY MR. SIMS:

Q How much coal did you consume in 1964?

A We consumed just a little over a million tons.

Q How much did you consume in 1969?

A A million six hundred thousand tons.

Q Mr. Davis, do you think the State of Illinois will ever pass a law that in effect prohibited the burning of a substantial portion of Illinois coal, not only in the heavily populated areas, but in all sections of Illinois?

MR. HEDLUND: Your Honor, I am going to object. I think this is pure conjecture, and I do not believe Mr. Davis is a member of the state legislature. I will object on that basis.

MR. SIMS: Mr. Hedlund was asking him to predict what coal he would use in the future, and—

THE COURT: Well, we do not know what legislation will be passed. It is totally a matter of conjecture. Objection sustained.

BY MR. SIMS:

Q Mr. Davis, I think you stated on direct that the only other company interested in supplying CILCO at the time you were negotiating to supply your No. 3 unit besides UEC was Humble Oil Company, is this [725] correct?

A That's right.

Q Do you know approximately where the Humble coal reserves were located?

A Well, as I understand, the Humble coal reserves are located in the vicinity of Carlinsville, Illinois.

Q Do you know what county that is?

A No, I do not. It's right below Springfield, possibly—well, I don't know.

Q But, it is, as you say, somewhere below Springfield?

A Yes, sir—

Q The Freeman—excuse me.

A I am sure the vicinity of the coal around Carolinsville.

Q The Freeman Crown Mine is located in this general vicinity, is it not?

A That's correct.

Q Did Humble Oil indicate to you that they would supply you coal at a price competitive with Fulton County coal at the time you were negotiating for this No. 3 unit?

A Yes, they did.

[726] Q Now, I think you testified that in the future you expected probably to look to either Springfield or Southern Illinois for your future coal supplies?

A I don't believe I said that. I said that we would attempt to get the coal from the Peoria-Fulton County area or below Springfield.

Q If you go into the Springfield area to obtain coal, you will probably be dealing with either Freeman or Humble as a supplier in that area, is this not true?

A I presume.

Q Is it not true that when you were negotiating to supply your No. 3 unit at Edwards, you expressed an interest to the UEC officials in the Industry Field?

A No, that's not true.

Q You are familiar with the Industry Field of UEC, are you not?

A Yes, I am.

Q The Industry Field was not brought up in these discussions with UEC?

A We have never been approached by United Electric to furnish us coal from the Industry Field.

Q That was not my question.

Did you ever mention the Industry Field, in connection with supplying the No. 3 unit, to UEC officials?

[727] A At various times Industry Field was brought up in conversations, but no serious negotiation for the coal in the so-called Industry Field has ever taken place.

Q Assuming, Mr. Davis, that Industry Field is mined in the near future, is it not possible that UEC and Freeman would be competing for your coal requirements if they were operated as independent companies?

A If I care to make that assumption. I'm not real sure I can basically make the assumption.

Q I have asked you to make the assumption.

A Beg pardon?

Q I have asked you to make the assumption.

A I would have to assume, then, as long as we are assuming, from what I know of the Industry Field that the coal, from the various conversations that I have had, is not economically strippable. Now, if that's the case, then you would have to make the assumption that it's not economically available to you.

Q I asked you, though, assuming Industry Field was mined in the future—

A Yes.

Q (Continuing)—and this coal was offered to CILCO, is it not possible that UEC and Freeman would be [728] competing for the coal requirements of CILCO if they were operated as independent companies.

A Mr. Sims, it's awful hard for me to make that assumption all the way through.

Q Humble did offer to supply you coal in connection with this No. 3 unit, did they not?

A That's correct.

Q Humble reserves are very close to the Freeman reserves in Central Illinois, are they not?

A They're in Central Illinois, that's correct.

Q So, it is possible that Freeman will be supplying you coal in the future, is this not true?

A The term of our contract is for 20 years. It's possible for the latter two years that they would be furnishing us coal from the Freeman reserves.

Q You are planning to construct another coal unit in 1976, are you not?

A We are planning to construct another unit. We will have to study the fuel supply situation and make a determination after those studies. I can't say today is it going to be coal.

Q You have not committed yourself to purchasing any coal for this 1976 unit, have you?

A We have not made any commitment.

[729] Q So, are you in any position to say that if UEC and Freeman were merged, that they would have no effect on CILCO in the future?

A Well, we have studied the United Electric reserves, Mr. Sims, and we just can't see where United Electric has the reserves to be a factor in the coal business as far as we're concerned.

Q If their Industry Field was mined, however, they would be a factor in Fulton-Peoria area, would they not?

MR. HEDLUND: I am going to object, your Honor, at this point to further interrogation with respect to the Industry Field, unless Mr. Sims put all of the assumptions into such a hypothetical that are necessary for the witness to be able to answer the question. I believe he has been asked this question two or three times and the witness has said either that he did not know about all of the facts or it would depend, and so on. I am going to object to further questioning on this.

THE COURT: Do you have any comment, Mr. Sims? Hasn't this question been asked and answered?

MR. SIMS: Yes, I think so.

THE COURT: All right. The objection is sustained.

[730] BY MR. SIMS:

Q Is it your opinion, Mr. Davis, that UEC cannot sell its present coal profitably without Freeman back-up reserves?

A Well, in our own case we would not have purchased coal from United for a term less than 20 years. We were looking for a million tons of coal per year for a term of 20 years, and if they did not have this coal, there would have been no contract, I feel sure of that. I negotiated with United for a long period of time. We were after this coal for about a year, talked to Truax-Traer, Peabody, Humble, United, and we were looking for this coal for about a year trying to get a million tons a year.

So, I feel certain, had not somebody come up with the coal and the reserves that we wanted, we would have tried to put something else together. Now, what that would have been, I don't know, but it would have put them in a rather precarious situation as far as we were concerned.

Q My question was, Mr. Davis, do you have any doubt that UEC would be able to profitably sell its coal reserves?

A Yes, I have serious doubts. As a matter of [731] fact, we have a contract, or did have a contract running through 1974 with United, in which reserves of Cuba were sold to us, but due to the lack of discovery, let's say, the reserves weren't there, so we had serious doubts about United's ability to produce coal to us.

Q Did you revoke this particular contract with UEC?

A It is being revoked from the Cuba Mine simply because the coal reserves at Cuba are running out this year, while we had a contract going through 1974. This was the additional pressure, so to speak, to give us a good contract with good reserves from United. So, United's reserve situation, I think, is very lean to say the least.

Q Do you know for a fact, Mr. Davis, that the Cuba reserves are running out this year?

A From the best information I can get from their drillings and what they tell us, they have not found the reserves in that area that they expected to find. Otherwise, they've run into faults where the glaciers have come down and pushed the coal out or ground it up, so consequently they simply just don't have the coal. This is one of the things that you [732] run into sometimes.

Q Before you entered into the present contract with UEC, the original contract with UEC was to expire when, 1974?

A As I recall it.

Q Is your statement now that CILCO would have revoked this contract had they not entered into another contract with UEC?

A I don't know that we would have had any other choice. We have to have coal, so we got to working with United and Freeman to provide us the coal from another source.

Q UEC indicated then that they would not commit any coal other than the Cuba coal reserves?

A Oh, no. They're committing the Buckheart reserves to us now.

Q This is under the present contract, right?

A No, sir, this is under the future contract?

Q Excuse me.

This is the one that starts in 1973.

A It starts when the Buckheart reserves run out, unless assume they run out this year, then the future contract would start at the Buckheart arrangement.

Q It is a fact, though, is it not, Mr. Davis, [733] that there was very little enthusiasm among the coal companies to supply your No. 3 unit on this 20-year contract?

A Well, it's a fact that Peabody, for instance, had just built a new mine at Alma, and they were not getting the production out of the tippie that they had expected because they were running into technical difficulties, washing the coal and that sort of thing. We have a long-term contract with Pitt-Midway, and they are running about full production. Truax-Traer, we just consummated a contract with them two years prior. So, we

had just about used up the tipple capacity or the production capacity then available from that field.

[734] Q Consolidated Goal would not even talk to you concerning this particular arrangement, is that true?

A If you're speaking of Truax-Traer, yes. Well, they talked to us.

Q Pittsburgh Midway and Republic told you they had insufficient reserves?

A That's correct, in that area.

THE COURT: Excuse me, Mr. Sims. How much longer will your cross examination be?

MR. SIMS: Probably 20 minutes.

MR. CUSACK: Your Honor, may I confer with my co-counsel for a moment?

THE COURT: Yes, you certainly may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: Thank you, your Honor.

MR. SIMS: It will probably be 25, 30 minutes.

THE COURT: Well, I regret that the only thing we can do is to proceed until 12:30 and we will have to recess. Will this witness be available Monday morning?

MR. HEDLUND: Is there any possibility, your Honor, of trying to get another half hour in this afternoon?

[735] THE COURT: I cannot. I just cannot work it in. We started at 9:00 this morning.

MR. HEDLUND: I know. I will have to consult with Mr. Davis.

THE COURT: Will you confer among the parties here and try to work it out. Let me inquire at this time as to how much longer the defense is going to take.

Is it Tuesday that I have the three-judge court?

THE CLERK: Yes, your Honor, 2:00 o'clock.

THE COURT: We will go from 2:00 to 3:00 on that, and we will start the trial at 3:00 on Tuesday afternoon.

MR. HEDLUND: Your Honor, I will have to take a look at our trial list. I am concerned that I think at this

point we are about two days late in terms of our original schedule.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: For example, our original schedule was to have completed this week all of the witnesses that have been on the stand plus four that we did not put on or three we did not put on and two now that have not had their cross examination completed. I would say at [736] this time, your Honor, that unless it shortens up very, very quickly next week, we would be into the week of April 13th on our case. We are, of course, willing, with the Court's pleasure, to extend the time of the trial days. Actually, it is more in our benefit because most of these people are from out of town.

THE COURT: I will have to work a schedule out. That is the reason I wanted to ascertain it, because it is going beyond the estimated period of time in which I hoped to finish.

Will this witness be available on Monday, or are you going to discuss it with him?

MR. HEDLUND: I will have to discuss it with him, your Honor.

MR. CUSACK: Will Mr. Thorson be called Monday?

MR. HEDLUND: Mr. Cusack, I do not know how I can answer this unless we sort these other things out. On Monday we have a witness whom I have promised up and down would be on Monday, and that is Mr. Ernest Tremmel of the Atomic Energy Commission, Chairman of their Industrial Division. He is coming in with AEC counsel Sunday night, so I have to put Mr. Tremmel on one way or another Monday. I will have to talk to Mr. Davis [737] about his availability next week.

MR. CUSACK: We would like to know as soon as possible who you would like to call on Monday.

MR. HEDLUND: Mr. Cusack, you will know within moments after we reach a decision.

THE COURT: Let me make this suggestion: will both sides try to shorten their interrogation. I do not

like to keep harping on this, but there are repetitious questions by the plaintiff here, and one question could cover five as they are being asked. Now, you are all able lawyers, and it is dragging on and on with repetition and going back and forth. I know you can do it, Mr. Cusack. I do not want to circumscribe your examination, but we are taking what I would say is 50 percent more time than should be taken with carefully prepared cross examination. I wish you would keep that in mind.

MR. CUSACK: Yes, your Honor. I will review the cross examination of my colleagues.

THE COURT: All right, then, we will recess until Monday morning at 10:00 o'clock. Thank you. Check it out amongst you on this.

MR. HEDLUND: Very good.

MR. CUSACK: Thank you, your Honor.

[738] THE COURT: Good night, and have a good week-end.

(The hearing in the above-entitled cause was adjourned to Monday, April 6, 1970, at 10:00 o'clock a.m.)

[739]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

Before HON. EDWIN A. ROBSON, Judge,
Monday, April 6, 1970
10:35 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,

appeared for Plaintiff;

MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,

appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM.

* * * *

[741]

A. H. DAVIS,

called as a witness by the defendants, having been previously duly sworn, was examined and testified further as follows:

CROSS EXAMINATION

(continued)

BY MR. SIMS:

* * * *

[744] Q In other words, it is of benefit to you to have two coal suppliers in such a case as that so you [745] can

remind the other coal supplier that if he doesn't reduce his price, you will start buying the coal from the other?

A Well, as you know, Mr. Sims, we have had and still do have a number of suppliers, so we attempt to use whatever leverage we can to get the prices we can.

[746] Q Do you expect the price of coal to go up in the future?

A If we continue the inflation that we have had during the past several years, I certainly would expect that commodity as well as all commodities to go up in price.

Q Then is it your belief that coal companies will not respond adequately with sufficient supplies of coal to keep the prices stable in the future?

A I have no real belief in that area one way or the other.

Q Do you have any opinion as to whether coal companies will be able to improve mining technology and reduce the cost in the future?

A I would certainly hope so. I am not an expert in that field. I really don't know if they had planned or what their future might bring about.

Q Are you confident that if they should improve cost, they will pass these cost benefits on to you?

A Our contracts in general are based somewhat upon their production costs, so if they should increase their productivity, that will reflect back to us.

.

[748] Q In the last five years it has gone up?

A When we have seen the inflationary trend, the cost per million BTU's has gone up.

Q Assume for a minute this unit you are planning to bring into service in 1976 will be a coal burning unit and will consume approximately one million tons of coal per year for its expected life of, let us say, 20 years.

Now assume Coal Company A offers to supply the total fuel requirement of this unit. That is, one million tons per year each year for 20 years.

Assume Coal Companies B and C are to supply you 500,000 tons each per year for 20 years and Coal Companies B and C offer their coal at a lower price than Company A.

Which company or companies would you award the contract to?

A Well, there is a number of factors to be considered there. In general, if you have one supplier that would supply you one million tons a year and you could unitize the shipments, and if you had the facilities to receive this unitized shipment, then in all probability the transportation costs would be less, so we would have to add up the cost the fuel at the mine, plus the [749] transportation cost, and based upon that I don't know which one would be the lowest.

Q My assumption was that the coal being supplied from Companies B and C, total delivered price, was cheaper than Company A. Which company or companies would you award the contract to in that situation?

A Well, let me frame my answer like this: Knowing the problems of the supply of coal, I doubt very much if we could get such a situation as you are speaking of. But if we could, I guess it would make no difference. You would take the lower cost.

Q You would award to Companies B and C?

A Right

[750] Q Take the same situation. Company A will supply you one million tons per year for 20 years. Assume Companies D, E, F and G come to you and each offers to supply you 250,000 tons each per year for 20 years. Companies D, E, F, and G offered you a lower price for delivered BTU of coal than Company A.

Which company or companies would you award the contract in that situation?

A Are we also assuming, Mr. Sims, that each one of these companies has the proper reserves?

Q Certainly.

A And did you say the cost per million BTU's amongst all of them was the same?

Q No. Companies D, E, F, and G yes: their delivered coal price was lower than the delivered price of Company A.

A The transportation costs are the same?

Q The total delivered cost was lower for Companies D, E, F and G.

A I presume that if we had one supplier that could supply all the coal and several suppliers that could supply some fraction of the coal, it would make no difference except in the bookkeeping that we were concerned with. We would much rather deal with one [751] supplier or say three suppliers rather than ten suppliers.

Q Would you much rather deal with one supplier than four suppliers, if the cost was cheaper with the four suppliers?

A Well, let me give you an indication of what we run into. If we have four suppliers of coal, which we do substantially now, and one of them runs into tiddle trouble, which one of them has, then we have a problem with supply from that particular guy. From that producer, that is.

Now, I suppose that if you had ten suppliers, your possibility of running into transportation problems—let's take the cars. As you probably know, the cars available to the coal people are in very short supply. So, the more coal you ship out that is handled by one railroad, it gives you a much better possibility of receiving coal.

During this past year in the fall when the grain shipments were high, if we had had ten suppliers of coal, in all probability we couldn't have got any coal cars. So just from a practical standpoint, you are better off with one or two or three or four suppliers than with ten suppliers.

Q If you are being supplied from ten different [752] mines, and something goes wrong in the tiddle of one mine, you usually can turn to the other nine to make up the balance of the production, can you not?

A I wish that were the case. It is not the case. The fact is that all of the producers are producing at their peak, and if we wished to pick up coal, we almost have to go out begging.

[753] Q Would you rather be faced with the situation in which one of ten suppliers could not supply you with coal or whether your only supplier could not supply you with coal?

A Well, I guess we're getting down to a problem of probability here, reliability. If we take them as being all adequately tooled up and everything, I suppose that if you had 100 suppliers, you'd be better off, and they were all going to deliver.

Q The present coal companies operating in the Fulton-Peoria area are Ayrshire, UEC, Truax-Traer, Peabody, and Pittsburgh-Midway, is this correct?

A Ayrshire or Republic is a little more remote from us than Peabody, Truax-Traer, and United. We pay a higher or would pay a higher, freight rate from Republic than we would from the other three.

Q Do you know if you would a higher price, total delivered price from Republic?

A Very definitely.

Q Have you received price quotations from them?

A Yes, we have.

Q Would you be concerned, Mr. Davis, as president of CILCO, of UEC and Freeman merged with Truax-Traer?

A As your Department undoubtedly knows, we made [754] a complaint several years ago about the merger of two coal companies in our area, and you have a reached a satisfactory settlement, I take it, with those two companies, so anything that we feel reduces the amount of competition in our area, we are certainly not that bashful about making a complaint. If Truax-Traer were to merge with, say, Peabody in our area, we'd make another complaint.

Q Why would that bother you, Mr. Davis?

A It's a reduction of competition in our area.

Q One less supplier—

A That's right.

Q (Continuing.)—supplying you with coal?

A That's right.

Q Then, do you feel it is a benefit from a competitive standpoint to have several independent companies in competition to supply you with coal?

A Oh, yes.

Q You said yes?

A Yes.

MR. CUSACK: Your Honor, may I speak to Mr. Sims for just a moment?

THE COURT: All right. You may.

(There was a short interruption, [755] after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: Thank you, your Honor.

THE COURT: All right.

[756] BY MR. SIMS:

Q You testified that you first became aware of the Freeman-UEC association, I think, in about 1960?

A That's correct.

Q You are not in the position, are you, to tell what would have happened if UEC had been a competitor and were not associated with Freeman as of 1960?

MR. HEDLUND: May I have that question back, please?

THE COURT: Read the question.

(The question was read by the reporter.)

MR. HEDLUND: I am going to object to that question. I think it has an assumption that UEC is not a competitor. Do you mean with Freeman, Mr. Sims? The question isn't clear to me, your Honor. I object on that basis.

BY MR. SIMS:

Q That it was operated independently of Freeman.

MR. HEDLUND: I am still going to object. I think the question is hopelessly garbled at this point and cannot be understood.

THE COURT: Reframe the question.

BY MR. SIMS:

Q Mr. Davis, are you in a position to say what competition UEC would have offered Freeman or Freeman offered UEC had they not been affiliated as of 1960?

[757] A I will offer an opinion, Mr. Sims. As far as we are concerned, and we, I think, have so stated to your department, that the competition between Freeman and United did not affect us, one prime reason being that United had limited reserves. As far as we could see, the reserves back-up that was going to be provided by Freeman would be beneficial to the purchasers of coal, so we just don't believe that the affiliation between the two companies did anything to eliminate competition, specifically as far as we are concerned.

Q Do you know for a fact, Mr. Davis, that Freeman would not have offered you coal from their Crown mine but for the association with UEC?

A To the best of my knowledge, Mr. Sims, we have never had a Freeman salesman call on us, as far as I can say, forever.

Q But, do you know if one would have called on you after 1960, had they not been affiliated with UEC?

A I really couldn't say whether they would have or wouldn't have.

Q You supervised the preparation of the subpoena questionnaire sent to CILCO in connection with this case?

A Yes, sir.

[758] Q The questionnaire asked for, among other things, the price, including transportation costs, that CILCO paid for coal from each mine of its suppliers where the shipments were 20,000 tons or greater, is this true?

A Yes, sir.

Q Did you notice, when completing these questionnaires, that in 1967 you were paying identical prices to the penny, \$4.68 a ton, for coal from Peabody's Fairview mine, Truax-Traer's Fiatt mine and UEC's Cuba mine to your Edwards station?

A Yes, sir.

Q You were aware of that?

A Yes.

Q I also notice that you were paying the identical price to the penny, \$4.93 a ton, for coal from Truax-Traer's Fiatt mine, Pittsburgh-Midway's Allendale mine, and Peabody's Fairview mine to your Wallace station. Were you aware of this?

A Yes.

Q Does it concern you that for two of your largest generating stations you were receiving identical prices from several of your coal suppliers in 1967?

A No, it doesn't concern me, Mr. Sims. As I [759] mentioned earlier, what we try to do is we try to obtain the lowest cost per million BTU's from one or several of our suppliers, and then we try to use that leverage on the other suppliers to obtain substantially the same price.

[760] Q I see.

A (Continuing.) Now, today, due to different escalations, we are not paying that same price to our suppliers.

Q But, I noticed in the 1966 questionnaire, Mr. Davis, that you were not paying identical prices, you were not receiving identical prices, from these same suppliers. Is it your belief, then, that it was simply a coincidence that the prices happened to be the same for 1967?

A I really couldn't say. I'd have to review it. In 1966 we negotiated a new contract with Truax-Traer which substantially reduced the cost of coal to us. Today the cost per ton, they are about the best buy. The cost per million BTU's, the best supplier is United.

You see, substantially when we talk about cost per million BTU's, we are talking about one thing. We are talking about quality. When we are talking about the cost per ton, we're talking about a lower price, and really, we go by the cost per million BTU's.

Q I see.

I notice in the questionnaire that you had listed on the questionnaire that they had all identical BTU contents, and yet the price was identical, so [761] apparently they were selling you the coal at identical price per million BTU?

A I don't recall what the question on the questionnaire was. Was it BTU's specified?

Q Yes. They did specify what BTU's you received.

A Yes. No. Was the question—on the questionnaire, was it BTU's specified?

Q No. It was the BTU's in the coal delivered to you from the companies.

A All right.

Q They were identical BTU's?

A I expect the answer there was our average BTU received. I don't know.

Q But, at any rate, you did not bring it to the attention of the president of the Antitrust Division, the price that you were receiving, identical prices from these coal producers in 1967?

A I see no reason why we should.

Q Would you take the contract from the first coal producer and would you go to the next one and say, "This is what I received on this contract, and you could give me

the coal at the same price"? Is that the way you handle it?

A Normally the coal has been pretty much the [762] same cost per ton. The varying factor has usually been the transportation cost. Now, these tariffs are pretty well published, so we simply point out to the suppliers that we can obtain transportation cost from such and such a mine at whatever cost it is.

[763] Q How do the coal companies determine what the mine cost of the other coal companies is?

A I haven't the slightest idea.

MR. HEDLUND: I am going to object to that. I do not believe this witness is qualified to say how coal companies find out about other coal companies' costs.

THE COURT: If the witness knows, he may answer.

BY THE WITNESS:

A I haven't the slightest idea.

BY MR. SIMS:

Q Did you analyze the coal from Freeman's Crown mine to see if it would burn in your boilers properly before entering into the contract with UEC in 1968?

A We did not.

Q You would assume it would burn properly?

A We made that assumption, yes.

Q I see.

Was there any reason for you to believe that it will not burn properly in the same boilers which you burned the UEC coal in?

A From what they told us of the coal, we assumed that it would burn properly.

MR. SIMS: I have no further questions at this time.

[764] THE COURT: Is there any redirect?

MR. HEDLUND: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. HEDLUND:

Q Mr. Davis, is it likely that the transportation costs involved in a shipment of a million tons from a single sup-

plier would be less than 500,000 tons each from two suppliers, or 250,000 tons each from four suppliers?

A Well, in our negotiations with our railroads, for the most part the railroads would very definitely like to have shipments in the neighborhood of a million tons. We have one railroad that won't even consider shipments less than a unitized train. So, if you ask this particular railroad to haul a shipment of 250,000 tons, they wouldn't even consider it. So, very definitely the transportation cost is based upon unitized haul and tonnage, volume shipments.

[765] Q Is CILCO still out trying to obtain new gas customers?

A Yes. We are trying to obtain new gas customers. We have a very definite effort going on to sell our gas supplies.

Q In the discussions with Humble Oil in terms of trying to or being interested in supplying your stations in Peoria, were they able to present sufficient information for you to know whether, had you gotten a bid from them, their price would have been competitive with Fulton County coal?

A Humble Oil at the time they approached us had just decided to open up a mine and get into the mining business. While they quoted us a price or suggested a price they thought they could deliver the coal to us at, they had no specific information and had not made a firm offer as such, had not presented a contract as such, had not indicated what the transportation to us would be as such. They were very scanty in their information. As a matter of fact, I think looking at the mine safety laws that have been passed since they made their initial approach, we would expect their cost per ton of coal to have increased perhaps 60 or more cents per ton, which would have undoubtedly created an escalation that would [766] have put them out of order.

Q One final question, Mr. Davis. Can you give me some sort of feel of the average length of haul by railroad or any other means of transportation you have with respect to coal shipment to your Peoria area stations?

A The length of haul to our Peoria area stations varies from 30 to 45 miles by railroad.

MR. HEDLUND: That is all I have, your Honor.

THE COURT: Any recross?

MR. SIMS: Yes, your Honor. One question.

RECROSS EXAMINATION

BY MR. SIMS:

Q You mentioned the mine safety laws, Mr. Davis. Should this make strip coal more attractive now with the increased cost of deep mines?

A Strip coal is affected to a lesser extent than deep mine coal. I don't know exactly what this extent will be, but to a lesser extent.

. . . .

[770]

ERNEST B. TREMMEL,

called as a witness by and on behalf of the Defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Would you please state your name and occupation.

A My name is Ernest B. Tremmel. I am employed by the U.S. Atomic Energy Commission. My title is Director, Division of Industrial Participation.

Q Now would you please describe your duties and responsibilities as Director of the Division of Industrial Participation?

A In about 1961 the U.S. Atomic Energy Commission decided to establish a Division of Industrial Participation because under the Atomic Energy Act the Commission is charged not only with developing nuclear energy, for weapons for the security of our country, but also to develop the peaceful uses of nuclear energy that might benefit our way of life.

Along with developing the peaceful uses, the Act itself said we should develop a competitive industry.

So in 1961 the Commission established [771] this division, whose purpose was really about three-fold.

First was to be a focal point for American industry, so that in the Atomic Energy Commission American industry would have one place to come to learn about what the opportunities were for the peaceful uses of nuclear energy.

The second function was to review the research on the work done in our laboratories throughout the nation, in government-operated laboratories, to determine what activities had reached a point of technology where they might be applied to commercial utilization by our system in our country.

[772] The third function was to report to the Commission at least annually on how successful the Commission was in carrying out its responsibility of developing peaceful uses of nuclear energy. This is done by means of a report that our Division puts out, and through the annual report of the Atomic Energy Commission.

We had a fourth function later assigned to us, and that's to be a point of contact for the states, strictly from, primarily from trying to attract new industry to the states. We were the place where the states representatives could come to and say what kind of industry in the nuclear field seems to make sense in our state.

Then we had a fifth more minor function added that is to look at spin-off typical of the NASA spin-off program, to look at things in our laboratory, techniques or machine tools or applications that were non-nuclear that might have use in private industry.

BY MR. HEDLUND:

Q Could you now briefly give us a description of the highlights of your career or your background?

A Yes. I graduated from the University of Wisconsin in Madison, Wisconsin, in 1941. I spent about [773] a year working in the aircraft industry and then joined the U.S. Corps of Engineers, where I worked on the construction of a small arms plant for about two years. In about 1943 I joined a secret project called the Manhattan Engineering District, at which time I did

not know myself what they were doing, but we knew it had something to do with the war effort, and I spent about eight years from 1943 to about 1950 working on the atomic bomb program.

In 1950 I transferred to our Chicago operations office, which manages the Argonne National Lab, and transferred to our programs for peaceful uses of nuclear energy. From 1950 until 1960 I spent my time, about three years, at Argonne National Lab on basic development of nuclear energy, and I spent about five years on work related to the development of a nuclear propelled aircraft, and then around 1958 or '59 I transferred to our headquarters to work as an assistant to Commissioner Floberg and then Commissioner Wilson, and then—

Q These were Commissioners of the Atomic Energy Commission?

A These were Commissioners of the Atomic Energy Commission. I spent about three years working [774] as an assistant to the Commissioners.

In 1961 when the Division of Industrial Participation was established, the Commission named me as the Director of that Division, which position I am presently holding.

Q Thank you.

When was the Atomic Energy Commission created?

A The Atomic Energy Act was first passed in 1946, and that set up a civilian agency to handle the nuclear energy program.

Q Are you familiar with the activities of the AEC and of American industries since World War II in developing nuclear energy as a source for the generation of electricity.

A Yes, I have been directly or indirectly connected with these programs, so I feel I am very familiar with all of these programs.

Q Would you then, please, briefly relate the history of that development first through the year 1964?

A Well, as early as 1946 when the Atomic Energy Act was passed, a number of chemical companies in the United States began some studies to take a look at the application of nuclear energy to central station power.

[775] Q By "central station power" you mean an electric utility?

A Electric utility industry.

From about 1946 to around 1950 or '51, there were a number of these studies carried out, and around 1950, in that time period, the AEC itself undertook what we called an experimental reactor program, and under that program we built an experimental boiling water reactor at Argonne National Laboratory, and in connection with the Navy program, Admiral Rickover's program, a pressurized water reactor was built at shipping port. The reason why I mention these two is because the light water reactors that are being sold today are either based on boiling water or pressurized water technology, so that the experimental boiling water reactor at Argonne was an experiment to demonstrate that you could satisfactorily make such a machine work, and the Shipping Port project was an experimental reactor to show you could generate power from pressurized water.

Now, following that the Commission then went forth with what we called a power demonstration series of rounds. We had three different times when we went out for public invitations to encourage private industry [776] to carry this technology from these experimental reactors into practical use. As a result of these demonstrations, there were two large reactors built. One was the Dresden No. 1 outside of Chicago,—

Q By whom was that—

A (Continuing.) —the Yankee Atomic Power Plant up in New England. The Dresden No. 1 was a boiling water reactor, and the Yankee Atomic Power Plant was a pressurized water reactor.

Q I am sorry to interrupt you. I just wanted to ask you who actually built Dresden No. 1, what utility?

A Dresden No. 1 was built—I would like to explain this in a little more detail, that under this invitation under the first round, it called for a cooperative effort between a utility, a private manufacturer, and the United States Government through the Atomic Energy Commission, and the concept was that one would build the plant which would be built actually on a utility

system, so that you could demonstrate the generation of power from a nuclear plant and its use, but that it would not, necessarily, be economical. In other words, the power might cost more than if you had put a fossil plant, but the extra cost was picked [777] up by all three participants, the utility, the Atomic Energy Commission, and the manufacturer, in order to demonstrate the practicalness of utilizing nuclear power on the utility system.

The one at Dresden was a combination of General Electric, Commonwealth Edison and the Atomic Energy Commission. The Yankee Plant was a combination of a group of New England utilities, Westinghouse, and the Atomic Energy Commission.

I wanted to also mention that under these invitations we had three rounds. The first round was directed more at the large utilities in our country. The second round was directed at the smaller utilities, the municipals and the REA, to give them a chance to get some knowhow in this new field, and the third round was pretty much general again.

Following the Yankee and Dresden Plants, both General Electric and Westinghouse next offered commercial plants on a strictly unsubsidized, economical basis.

There is one other interesting point there, that in both of these cases General Electric and Westinghouse offered plants at a date somewhat before they had gained a lot of experience in actually operating [778] Dresden or Yankee, but these two initial plants led the road for these two companies to move into the commercial field. [779] Q Could you mention some of the stations that were built in what you have referred to as the second round of the program?

A Yes. The second round was directed at small plants, such as Elk River, the Pathfinder, and Dairyland, and the Piqua plant.

Not to take up a lot of time, but there were other concepts of reactors that were cooled with other coolants than light water. The Piqua plant, for example, was a small plant which was built to see if an organic cooling material might make more sense.

The Pathfinder plant was built to demonstrate a different purpose, to demonstrate how one might generate steam and whether you could have superheat. There were two plants built, Puerto Rico and Pathfinder, to see whether superheat might make sense in a nuclear reactor.

Q Who was the utility involved in the Pathfinder?

A That was Northern States Power Company.

Q And you mentioned Dairyland—

A Dairyland Power, in my hometown, LaCrosse, Wisconsin.

I might say, so that the record is clear, [780] that the Commission had responsibility to develop competition, as this nuclear industry was developed. So we feel we were rather unique in that here is a technology that was born as a Government monopoly, and we had a goal to transfer this technology into the private sector of our economy and create a competitive industry.

So in addition to GE and Westinghouse, Allis-Chalmers was the original company that went into this cooperative program on the Dairyland, and I believe the Pathfinder also was Allis-Chalmers.

We also had been and were building a cooperative program at Consolidated Edison in New York called the Indian Point. So we brought a number of companies—B&W, General Electric, Westinghouse, and Allis-Chalmers—into the field at an early date in order to get and to give a number of companies experience, equal experience, so they could enter the field.

[781] Q "B & W" is Babcock & Wilcox?

A Yes.

Q Could you tell us, please, of the significant changes which have occurred in the position of nuclear energy as a source of generation of electricity since 1964?

A Well, actually the first nuclear power plant that was considered to have been sold strictly on an economical basis—in other words, that it could compete with fossil fuel plants and was purchased by the utility because it was the cheapest source of power—was the Oyster Creek Plant. That was contracted for in 1963.

From 1963 until the middle or end of 1965 there were no more nuclear power plants contracted for. In fact,

the President at that time had asked Dr. Seaborg, who was Chairman of the Atomic Energy Commission, whether we were ever going to really make these plants competitive, as we were putting a lot of money into developing nuclear power.

Around the latter part of 1965 what we called a surge to nuclear power occurred. Around the last part of 1965 the utilities purchased seven nuclear power plants totaling over 4,000 megawatts.

[782] Then in 1966 they purchased 20. In 1967 they purchased 31.

Q These are thousand megawatts?

A These are number of plants.

To put this in better perspective, both in 1966 and 1967 the amount of nuclear capacity or generating capacity purchased was about 50 percent of the total. In other words, the other 50 percent was fossil-supplied power of one sort or another.

So to show what happened here, even in the Atomic Energy Commission there was none of us, nobody in the industry, that would have dared be this optimistic as to say that nuclear power would come into practical use—not practical use, but would be ordered this rapidly. So of course in the Commission we were surprised and happy to see that it was finding this commercial application.

Now, in 1968 the orders fell off to about, I believe, 15. Last year, 1969, there were either 7 or 9 plants purchased, depending upon what year you want to put 2 plants that were purchased at the end of the year—some people throw it into orders for 1969; others have put it into orders for 1970.

So the total amount of nuclear power [783] ordered to date, and these are firm orders, is about 130 plants or around 75,000 to 80,000 megawatts.

[784] Q Has the Commission prepared a compilation of the nuclear plants that are under construction, that have been ordered or that are likely to be announced?

A Yes. We prepared two reports. One is an official AEC press release, which comes out about quarterly,

which lists the plants and their locations and also breaks them down by what states the plants are in.

Then my particular division prepares a report in which we list plants on order, in operation or under construction, and we prepare that, but not necessarily quarterly. We change it whenever we feel there has been any significant changes.

Q I show you what has been received in evidence as Defendants' Exhibit 107, and I ask you if this is the first compilation to which you have referred?

A No. This is the second. That is the second one to which I referred in my statement.

Q I am sorry. This is the one that is prepared by—

A This is the one that is prepared by my particular division, and it was primarily prepared for internal use, although we make public distribution. The utilities and industry use this kind of data in [785] determining their own marketing.

Q I see that on the first page of Defendants' Exhibit 107, the central station nuclear plants, under the column "Utilities considered likely to place orders in 1970," is listed the Commonwealth Edison Company. Also the Tennessee Valley Authority.

Could you tell us how you determine that such orders are likely to be made in 1970?

A Well, part of our function, as I said earlier, is to report annually, at least to our Commission, and keep our Commission informed of the commercial uses of nuclear power.

What we do here is to try and list from our contacts with American industry what actually we think will be in the marketplace in the next year for nuclear power.

This is in order to keep our Commissioners informed of the status of the industry.

We determined this by our contacts with both the manufacturers and our contacts directly with the utilities themselves. We have just recently changed this. We said "Likely to order," and it is done here just to give our own people a feel of what utilities are in the marketplace currently.

[786] Q I show you now, Mr. Tremmel, what has been received in evidence as Defendants' Exhibit 108. I ask you if that is the other compilation to which you have referred?

A Yes. This is the other public release that the Commission puts out. This was really the one that gets broader distribution. The one that we put out is directed more for the concerned industry's direct use. This is made more for the public. The both of these are coordinated carefully so that the figures are in general the same.

Q On Defendants' Exhibit 108, this gives you a listing of installations by state, does it not?

A Yes, sir.

Q On that there are installations listed in Illinois, Indiana, Wisconsin, Iowa, Tennessee, Michigan, are there not?

A Yes.

Q Now, Mr. Tremmel, what particular factors accounted for the growth of nuclear power starting in the year 1965, or 1963, as I believe you stated it really began?

A Well, we think the reason why the utilities went to nuclear power was primarily based on the fact [787] that nuclear power in competitive proposals came out more economical in the long run than the fossil plants.

We think that subsequently there are other factors which have pushed nuclear power—let me say which have influenced the utilities in purchasing nuclear power plants. One of these a few years ago in the 1966 and 1967 period was the concern over air pollution. We think that some of the utilities favored nuclear power because they thought it would be helpful in eliminating air pollution. But we think basically there is no question in our minds that the utilities bought nuclear power plants because in their judgment the power generator would be more economical to the customer from these plants than from fossil plants.

Q Has the construction of nuclear plants been limited to any particular area of the country?

A Not necessarily so, with the exception of the Rocky Mountain states, and the gas belts through Texas, where

there is very cheap natural gas. Nuclear power plants have been ordered in all other sections of the country.

[788] Q Would that include the midwest?

A Yes. Now, originally—I think it is important here to have a little background on this, if it is all right with the Judge.

THE COURT: You may proceed.

BY THE WITNESS:

A Originally we thought that nuclear power would first come into being in the New England states because there is no coal and the transportation costs for fossil fuels in New England has been high.

It has been known as a part of our country where the cost of electricity is high.

So, we predicted that nuclear power first would become economical there. Then we predicted it on the West Coast, primarily California.

Our predictions were quite correct on New England, but in Southern California, as you know, in the earlier days, nuclear ran into some opposition.

What happened is nuclear power came into being in the middle west and in the southeast, and we were surprised as to what extent nuclear power was ordered by utilities, such as Commonwealth Edison, and TVA, where we had figured because they were close to mine-mouth coal, it would be very difficult for nuclear [789] to compete for some years.

But what happened in 1966 and 1967 is nuclear power plants were ordered in all sections of the country, with the exception of the Rocky Mountain States, and the Gas Belt in the Middle South.

Q I believe, Mr. Tremmel, you have referred to the decline in orders for nuclear plants that took place in 1968 and 1969. To what do you attribute this decline?

A There are a number of factors which I think accounted for this decline. Number one, we knew at some time the pace of nuclear orders could not continue at the rate it had, because the utility industry historically is known for ordering on a cyclical basis. In other words, you will reach a curve where it will hit a high point (in-

dicating), and then there will be a low point in the ordering, and then another high point again.

If one looks at the years 1955, 1956 and 1957, that period, and plots the sale of turbine generators, you would see the utilities had been ordering at a rate that was doubling the capacity every two years. We know that the capacity of the country doubles every ten years, so it was obvious this rate of ordering could [790] not continue.

We think they ordered nuclear plants probably at this pace because it takes longer to build a nuclear plant, and, secondly, they wanted to allow themselves more time because this was a new technology. So we knew that there had to be a fall-off in nuclear orders.

Another factor is that if you examine the size of these plants that were sold, the utilities were ordering plants that were three times to four times the size of any plant in existence that had operated.

[791] Q That would be regardless of fuel type?

A Regardless of fuel type, so that it would only seem prudent that any large utility that had ordered two or three nuclear plants would want to wait until one or two of these plants started operating before they ordered many more, just to gain experience, and we think this was a factor.

Now, I think we should also not disguise the fact that building these nuclear plants turned out to be a much more involved problem than the constructors and architect engineers had envisualized, so that delays were encountered in the construction of these nuclear plants, which in some cases the utilities had to order fossil plants in order to have capacity on the line for when it was needed, and because of the delays in the construction of the nuclear plants.

Q Does the size of a nuclear plant have any effect on its cost?

A It has a very definite effect. Nuclear plants tend to be higher-cost capital plants than fossil plants, and it's only at about the 500 megawatt range that nuclear plants have been able to compete in the marketplace with fossil plants.

Now, as nuclear plants get larger, they [792] tend to be more competitive than the fossil plants. The advantages seem to favor larger nuclear plants over, the cost, over fossil plants, but still the capital cost is higher, where the operating cost of a nuclear plant is lower. This is a fixed, some fixed ground rules that one ought to accept.

Q Do you have an opinion as to, say, by 1975 the size of nuclear plants that will be offered for sale?

A Yes. We think by 1975 the plants being offered for sale will be in the 1,100 to 1,500 megawatt size.

Q If I may pause there, do you have sufficient facts at your command to have an opinion as to the amount of coal that an 1,100 to 1,500 megawatt coal-burning plant would consume a year?

A No, I don't.

Q At the present time, Mr. Tremmel, what do you estimate to be the average capital cost of a nuclear energy generating plant to be per kilowatt hours?

MR. SIMS: Your Honor, I will have to object to this. I do not think Mr. Hedlund established a foundation to ask Mr. Tremmel cost information of this sort. I think that in testifying as to his background he did not testify that he did any cost studies, or his particular [793] division was engaged in drawing up cost studies on these nuclear plants.

THE COURT: Do you have any comment?

MR. HEDLUND: Your Honor, I think his position speaks for itself in terms of his role in the function of the Division of Industrial Participation. I would assume that this would be something that they would try to keep a close check on.

THE COURT: Lay the foundation.

BY MR. HEDLUND:

Q Mr. Tremmel, does your division collect facts or data that would permit you to give me a knowledgeable estimate of the average capital cost of nuclear energy generating plants at the present time?

A Yes, we do.

MR. HEDLUND: I will rest on that, your Honor. I think that is sufficient.

THE COURT: Yes, Mr. Sims.

MR. SIMS: Well, if he has knowledge of the information and can testify to what information these cost studies are based on, then I have no objection, but otherwise I would object on hearsay.

THE COURT: All right. Proceed.

[794] BY MR. HEDLUND:

Q Mr. Tremmel, would you give us, please, a description of the type of information that you collect in this regard and the analysis done on it.

A We keep in close contact with the utilities, so that we can have some idea what the cost of nuclear power plants are running, and we prepare detailed breakdowns of what composes these costs. In other words, how much are capital costs and what the cost of the fuel cycle is so that we can furnish this information to our Commission.

For example, Commissioner Seaborg, Chairman Seaborg just came back from Japan where he made an international speech, and he made a statement in there of what the cost of nuclear plants are running today in the United States, and part of this information, our division contributed information of this along with other divisions so that our Commissioners keep informed of what the costs are running.

We also try to keep some general idea of what fossil plant costs are running, and we do this through talking to utility presidents and executives, and that is one of the functions of my division.

Q Then, Mr. Tremmel, I return to my question, [795] based upon the data which you have just described, can you estimate the average capital cost of a nuclear energy generating plant per kilowatt hour at the present time?

MR. SIMS: Your Honor, may I ask him one question on voir dire?

THE COURT: On voir dire?

MR. SIMS: Yes, sir.

THE COURT: I think the foundation has been laid. You have the right of cross examination.

MR. SIMS: He said he talked to electric utilities concerning the costs. I simply want to find out whether he got from them the awarded contacts that they received.

THE COURT: You have the right of cross examination. Objection overruled.

Proceed.

BY MR. HEDLUND:

Q Do you have my question in mind, Mr. Tremmel?

A Yes, sir. I would like to answer that two ways.

Originally, the nuclear plants that were sold, the companies like General Electric and Westinghouse, in order to promote nuclear plants, sold these plants at a rather reasonable price, and these plants [796] are usually averaged out so that in order to make a profit the company might have to sell 10 plants, so that the first plant would be considerably cheaper than it might cost to produce it. So, the utilities—we call it, so-called, buying into the industry—the utilities bought some of these early plants as low as \$100 a kilowatt. These are published numbers by the utilities in some cases. In the Florida Power & Light, for example, they bought two plants at less than \$100 a kilowatt. The later plants, then, that are on order, they begin to go up to 140, 150 and 170 dollars a kilowatt, so that the present plants under construction, when they are completed, will probably average around \$170 a kilowatt because there have been significant increases in these plants, the cost of construction, since many of them were ordered.

Currently, from the best information we have assembled, nuclear plants are selling from around \$190 to \$240 a kilowatt, and Dr. Seaborg just used in his Japan speech, \$200 to \$240, to give some idea of what the present large plants are, and if you will look at the list, I believe it is your DX-107, we give some indication of the cost of the plants.

If you look at the first page, at the top, [797] you will see a Cincinnati Gas & Electric Company plant that was

sold by GE, 810 megawatts, and you will see the estimated cost is \$179, so that—

Q That is \$197, is it?

A Pardon me, \$197 million dollars, so that you can get some idea of what these plants are costing.

[798] As I say, if one extrapolates this to kilowatts, you begin to get a feel of the cost per kilowatt.

Q The estimated cost figures in that column, those are not per kilowatt, that is the total cost?

A No, you have to divide that by the size.

Q If the tendency to larger plants increases, will there be any reduction in the cost per kilowatt?

MR. SIMS: Your Honor, I will object to that as speculative.

THE COURT: What is that?

MR. SIMS: It is speculative.

THE COURT: If the witness knows, if they have estimates, he may answer.

BY MR. HEDLUND:

Q Do you have such estimates?

A Yes, we have done studies in the Commission of the trend of cost for large nuclear plants, and we think that the larger a nuclear plant is built, it will tend to decrease the cost, the capital cost. Of course, I don't want to mislead anybody here that that means cheaper power. Inflation might make the cost somewhat higher, but what I am saying is that the larger the size of the plant, there is a tendency for the cost, [799] the capital cost, to come down. That's what our studies show.

Q Compared to fossil fuel plants, is there any saving in the cost of fuel involved in a nuclear generating station?

A Yes. Inherently, as I explained earlier, a nuclear plant will operate, just strictly fuel cost, considerably cheaper than a fossil plant, and although the capital cost is higher, when you balance the total cost, this is why the utilities have gone to nuclear, because the total operating cost will tend to be lower in many cases due to the cheaper fuel cost.

Q Do you have sufficient facts, or have you developed sufficient data, so that you would be able to estimate the final capital cost for nuclear plants which are planned to come into operation in the period 1974 to 1975?

A Yes. As I said earlier, we think they'll average around \$170 a kilowatt.

Q In your opinion, Mr. Tremmel, has the differential between capital cost of building a nuclear station and the capital cost of building a coal-fired station remained the same over the past four years or has it spread?

[800] A No, it's remained essentially the same. The Commission, in our speeches by our Commissioners, have said that in general the differences in capital cost will be between \$30 and \$40 a kilowatt. It was that way five, six years ago, and the current difference would still, from the best of our estimates, be about that, and incidentally the Federal Power Commission, in their public statements, have estimated about the same differences.

Q In your opinion, Mr. Tremmel, is nuclear energy presently a competitor of coal as an energy resource for the generation of electricity?

A There is no question in my mind but it is.

Q Since approximately what year or years has nuclear energy been such a competitor?

A Since approximately 1965.

Q Is nuclear energy, in your opinion, a competitor of coal as an energy resource for the generation of electricity important even in coal mining areas of the United States?

A Based on the orders placed by the utilities, we would assume it is.

Q If we may go back again to the future, Mr. Tremmel, do you expect that nuclear energy will continue [801] to increase its penetration of the electrical generating business between now and 1980?

A The Commission has given out official forecasts, and our latest official forecast is that by the year 1980 there will be 150,000 megawatts of nuclear capacity installed in the United States. The present amount on order, operating or under construction, as I said, is

close to 80,000. This means we are predicting that another 70,000 megawatts will be ordered and installed and operating by 1980.

[802] Q About what percent of the total generating capacity in 1980 will that represent, if you know or have an opinion?

A Yes. The reason I hesitate is we base a lot of our estimates on the Federal Power Commission studies of the total amount of electricity required by our country, and the Federal Power Commission has just, in public testimony, released some new estimates. They have changed their estimate of the total amount of electric generating capacity required in the United States in 1980 from approximately 600,000 to approximately 680—pardon me—that's million kilowatts. Based on that, our 150,000 would represent somewhere around between 20 and 25 percent of the total generating capacity installed.

Q By 1980?

A By 1980.

Q Would this mean that nuclear would also be responsible for 20 to 25 percent of the electricity generated?

A No. We estimate that it would be responsible for a higher percentage of electricity generated because in general the nuclear plants will be operated as base load plants. They are large and they will be [803] kept on the line more than the other types of plants, so that it might account for between 30 and 35 percent of the electricity generated in the United States by 1980.

Now, these are just our best estimates.

Q Are you familiar with the estimates published by the Edison Electrical Institute?

A Only very generally.

Q Do you know what the Edison Electrical Institute's estimates are at present with respect to 1980?

A I don't believe they've come out with any recent estimates, but three, four years ago their estimates were somewhat higher than ours. I think they were estimating around 170 to 190.

I would like to say that if one got the Commission's official document, our estimate is a range. We're estimating 130 to 170,000 megawatts by 1980, with a

medium of around 150, so that we tend to use the 150 as the estimate that we expect to be reached.

Q Do nuclear fuel power plants offer advantages or disadvantages over fossil fuel power plants with respect to air pollution?

A We feel in the Atomic Energy Commission that [804] they offer advantages, since there is practically no air pollution of any kind from a nuclear plant.

Q Does this benefit, in your judgment, have any effect upon the competitive position of nuclear energy in the electrical generating field?

A Yes, we think that it definitely has effect, and one of the reasons for this is the fact that in southern California they will not allow any more fossil plants to be built because of the air pollution problems so that southern California will be committed to nuclear plants only in the future.

MR. HEDLUND: May I have just a moment, your Honor, and I will try to shorten this.

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

BY MR. HEDLUND:

Q Is the Atomic Energy Commission presently working on the development of more advanced types of nuclear reactors for electrical generation?

A Yes, we are. In our program, I have explained the light water reactors. We have been working on two other types of power plants that we call more [805] advanced. One of these, the high-temperature gas-cooled reactor, is being developed by Gulf General Atomics, who recently bought out this gas cooled program from General Dynamics, and it's located out in LaJolla, California.

Gulf General Atomics has just recently submitted a proposal to the Eugene Water & Electric Board on an 1100, approximately, megawatt gas-cooled reactor. The difference would be that this reactor would use gas as a coolant instead of light water.

[806] GE has quoted on a boiling water reactor. Westing house, B&W and Combustion have all quoted on pressurized water reactors, so that this utility received five proposals, and Gulf is hoping to now enter the field with their first commercial high-temperature gas-cooled reactor. This reactor will operate at higher steam pressures and temperatures, so that its efficiency as far as the amount of cooling water discharges would be the same as a fossil plant.

The present nuclear plants discharge slightly more heated water than an equivalent-sized fossil plant.

The high-temperature gas-cooled reactor offers, should offer, two advantages. One is discharge of less heated water, and the other is it would burn up less uranium than a light water reactor.

Now, coming behind that, the AEC today, we have phased out of the Government supporting light water reactors. We are still supporting some support to the high-temperature gas-cooled, but our main effort today in the Government is directing our funds toward developing a breeder reactor. Now, the difference between a breeder reactor and these others is that a breeder reactor will actually make more fuel than it consumes.

[807] In the light water reactor, when you are burning up the uranium, the U-235, you actually make in the fuel elements some additional fuel by converting U-238 to plutonium, so you are generating some additional fuel, but very little.

In a high-temperature gas-cooled reactor, you make more of this plutonium, and in a breeder reactor, you convert enough of the natural uranium that is not used in the reactor to plutonium, so that the breeder reactor actually generates enough fuel to refuel itself with slightly over, to start refueling another reactor.

Our goal in the Commission is the breeder reactor as the ultimate, because it would mean that we would have almost unlimited resources for power in our country.

Q Your description of the fuel aspects of it, is this what is sometimes referred to as a negative fuel cost?

A Yes.

Q When do you believe that the breeder reactors will be commercially available?

A The Commission has a target to try and have breeder reactors commercially available in the 1980's. We have not been specific on any year because it's very [808] difficult to estimate that, but our goal is to, at the end of this year, select a reactor manufacturing utility in combination with the AEC to build a demonstration plant similar to the Yankee and Dresden. This would be a plant, though, of 500 megawatts.

Hopefully, after that plant has been built and operated, we would hope that the manufacturers would be offering these plants commercially later on.

Q In your opinion, Mr. Tremmel, will nuclear energy continue to afford to utilities a choice in the type of plant they decide to buy?

A We are committed in the AEC to develop competition in nuclear industry, so that as far as within the nuclear industry itself, we see a utility having a choice from five suppliers of three different types of machines. If the breeder comes in in 1980, it would offer probably a sixth supplier, and a fourth concept to choose from.

Q Would nuclear energy also afford a choice for utilities as among energy sources?

A Yes. We've stated consistently since 1963 that atomic energy is not going to put fossil fuel out of business, but is part of the energy team. The demand in this country for energy is so great that we've said [809] it is going to take a lot of energy resources to meet it, and we feel that nuclear power is part of this energy team for the future.

I wanted to just add one more thing about the breeder program, and that is that the Commission is concentrating—there are a number of different types of breeders. We have concentrated on what we call a fast liquid metal breeder reactor as the first one we would try and bring commercially into use in the United States.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

[810] Q Mr. Tremmel, I would like to ask you whether you agree or disagree with the following statement—

THE COURT: What page? Is this in the transcript?

MR. HEDLUND: I am going to rephrase something from the transcript, your Honor.

THE COURT: All right.

BY MR. HEDLUND:

Q Do you agree or disagree with the following statement:

"The presence of nuclear power as a competitor has assisted materially in controlling the cost of fossil fuels."

Do you agree or disagree with that statement?

A Yes. We believe that nuclear power has been an effective mechanism to help keep the cost of electricity down in the United States.

Q In your opinion, in the long term what combination of generating units will provide the lowest cost electricity?

A Well, we like to think that it will be a combination of nuclear, pump storage, with gas turbine for peaking units.

Q One final question: How many orders for nuclear fuel generating stations do you expect will be [811] placed in the next two or three years?

A We expect that there will be around between 10 and 15 plants each year for the next few years.

Q This would be a higher level of ordering than was experienced in 1969?

A Slightly higher. If you put two of these orders back in 1969, you had nine plants. We expect, as I say, 10 to 15 in these two years. I might say that at the rate of 10 to 15 plants a year, we can easily reach the 150,000 megawatt estimate for 1980.

MR. HEDLUND: Your Honor, may I have just a moment to confer with my associate?

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. HEDLUND: Your Honor, that is all we have.
THE COURT: You may cross examine.

[812] CROSS EXAMINATION

BY MR. SIMS:

Q Other than electric utilities, Mr. Tremmel, are there any other coal consumers at the present time in a position to burn nuclear fuels?

A I am sorry, but would you repeat the question, please?

THE COURT: Read the question.

(Question read by the reporter.)

BY THE WITNESS:

A There are only two other potential areas. One is process heat. There have been two nuclear plants sold to the Consumers Power Company in Michigan that will be located in order to provide both electricity and process heat to the Dow Chemical Company.

There was an article in Nucleonics Weekly several weeks ago that the Eastman Kodak Company is considering a nuclear power plant to supply process heat for their Eastman Kodak Park.

One other area that we see a potential for nuclear energy is in central station heating. If at some day in the future it is possible to locate nuclear plants in highly populated areas, like New York City, one could use the heated water for central heating like some of the cities used to have. But that is some years [813] away.

But the process heat, as I say, Dow Chemical and Consumers together are building two plants now to use both electricity and process heat. Those are the only two areas that I foresee right now.

Q Are nuclear fuels burnable at generating stations designed to burn coal, gas or oil?

A No, they are not.

Q Generating stations burning gas, coal or oil are generally referred to as fossil fuel plants, is that correct?

A Yes, sir.

Q How did the AEC go about preparing this 1967 forecast of nuclear power?

A The forecast—?

Q The most recent one.

A I see what you are talking about, yes. That is done by a number of divisions in the staff. We have a division called Division of Operations Analysis. This division is a group of economists and technical people whose job it is to develop forecasts for the Commission. The Government, you see—well, we didn't get into any testimony today on the nuclear industry that supplies fuel to these plants, but the only service [814] today that private industry does not supply to a utility is the enriching function. The AEC has transferred all of its activities and created a competitive industry in all areas except this enriching.

* * * *

[819]

AFTERNOON SESSION

2:15 P.M.

* * * *

ERNEST TREMMEL,

called as a witness by and on behalf of the defendants herein, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

CROSS EXAMINATION

(continued)

BY MR. SIMS:

* * * *

[820] Q Do electric utility executives come to you from time to time for advice on building a nuclear plant?

A Yes, they do.

Q Assume an electric utility executive came to you at the present time knowing very little about nuclear power, but indicated to you that he was interested in building a nuclear plant.

What differences, if any, would you point out to him between a regular fossil plant and a nuclear plant?

A I would point out that the technology, nuclear technology, is much more detailed and complicated than a fossil plant, and that the utility ought to start building up a staff at the very early period of time so that they will have experience at such time as they are ready to purchase a nuclear plant.

[821] I would point out that there is a licensing procedure to go through on a nuclear plant which involves the other side of the Commission, and that our responsibility under the Atomic Energy Commission is to only license plants that we feel are safe from a health and safety standpoint for the public, so to that extent the utility ought to start preparing at an early date and training people so that they will be equipped to purchase and operate a nuclear plant.

* * * *

[823] Q Well, what would you tell the executive who came to you at the present time and wanted some assurances that the nature and scope of the licensing requirements would not change in the near future?

A I would tell him that we could not guarantee that it would not, but that in general we don't see any major changes.

Q Would you point out to him any differences in the lead time necessary to build a nuclear plant?

A Yes. I would point out that it is estimated it would take from five to seven years to build a nuclear plant, whereas one would build a fossil plant normally possibly in four to five years.

THE COURT: Can you hear the witness, Mr. Hedlund?

MR. HEDLUND: Just barely, your Honor.

THE COURT: Would you speak up a little louder, please? We have noise out in the hall. This is moving day. They are moving a lot of furniture, and so on, into my chambers.

THE WITNESS: Surely.

BY MR. SIMS:

Q If the executive told you he had to get the electrical capacity on the line in about four years, would you recommend in that situation that he explore [824] nuclear?

A I would recommend that he discuss with the reactor manufacturers to see what kind of guarantee he could get from them. But in general four years is a pretty tight schedule to plan on a nuclear plant based on the experience to date.

* * * *

[827] BY MR. SIMS:

Q Would you recommend that an electric utility company be of any particular size and installed generating capacity before considering nuclear power, assuming that the electric utility was not in a position to sell substantial portions of the nuclear power to other electrical utilities?

A No, I would not, because I think the utilities have to understand their own system.

Let me say this: that I don't know of any case where a utility would come and ask me that. I would be surprised that they didn't know what kind of back-up capacity they needed. I have never been asked that, because the average utility knows his system pretty well. I don't think I would be as expert in their area as the utilities would, as to what his situation is.

Q Have any electric utility executives representing an electric utility system having about 1,000 megawatts or less come to you to discuss building a nuclear station?

A Yes. The Eugene Water & Electric Board has. Their largest generating plants—and this is a municipal, in Eugene, Oregon—the largest plant they have in their system is 150 megawatts. They purchase [828] probably another 500 megawatts from Bonneville Power. They have just obtained proposals for an 1100 megawatt plant from five reactor suppliers.

The only assumption one can make which they published was that they sell part of this power. There is an agreement in the Northwest between all the utilities as to who buys what and when and whose system.

The interties in this country has greatly changed this whole situation. So it is hard to say what utility will purchase what size plant any more. That is my experience in the last two years.

[829] Q Did you testify on direct that the nuclear plant had to be of a particular size before it was economic as contrasted to a fossil fuel plant?

A Yes. I said starting about 500 megawatts. Under that a nuclear plant generally is not competitive. There could be situations in extremes, like Hawaii, where there are no interties, where a smaller plant might be. But in general that is somewhere around the 500 megawatt size where it becomes competitive.

Q If a utility executive came to you, then, and told you they wanted to build something that was going to be less than 500 megawatts, would you suggest then that they consider seriously a nuclear power plant?

A I would suggest that they talk to the reactor manufacturers, because I would doubt whether they would be able to get a proposal for under 500 megawatts, although there is a plant, Port St. Germaine, which is a gas-cooled reactor, and that is 330 megawatts. That is being built more as a prototype demonstration plant. But Gulf General Atomics has said they would consider building a duplicate of that; but it would be pretty high-priced. Chances are a 500 megawatt plant might come in at about the same price, because the manufacturer, if he has to tool up separately, it is going to cost more.

[830] Q You don't think the manufacturers in the future will manufacture sizes of 500 megawatts or less?

A That is hard to tell. There are many parts—not many, but there are parts of the world where the demand might only be for a 200 or 300 megawatt plant. One of the problems has been in the American Public Power Association, which represents the municipals, they have complained to the AEC and have encouraged us to do more work in trying to develop a small plant that the municipals could use and that parts of the world where they have unusually high fuel costs could use.

But in general in the United States, the continental United States, there doesn't seem to be much of a market

where a small nuclear plant could be competitive.

[831] Q What size of plants, nuclear plants, would the municipal companies be interested in?

A They were interested in plants under 500 megawatts. But in the last two years, especially the last year, there has been a tendency for the municipals to pool together. This is what our Commission has encouraged the APPA to take a look at, that is, the municipals joining together so they can build a larger plant so that the economics favor the larger plant.

So if you build smaller, you are going to get more costly electricity.

Q The present licensing scheme under the Atomic Energy Act of 1954 provides for two classes of licensing for a nuclear power project, is this true?

MR. HEDLUND: I am going to object to this.

THE COURT: Have you finished the question?

MR. SIMS: Yes.

MR. HEDLUND: I believe the regulations speak for themselves.

MR. SIMS: This is a preliminary question.

THE COURT: It is a preliminary question; otherwise, the motion to strike will be considered.

Do you recall the question?

THE WITNESS: Would you repeat it, please?

* * * *

[857] RUEBEN THORSON,

called as a witness by and on behalf of the defendants herein, having been previously duly sworn, was examined and testified further as follows:

THE COURT: You may proceed.

MR. CUSACK: Thank you, your Honor.

CROSS EXAMINATION

BY MR. CUSACK:

[865] Q Did you know, sir, whether or not the stock in United Electric owned by Investors Incorporated was acquired by the Crowns themselves?

A I do not know whether that was bought by the Crowns or by the Material Service Corporation. I think it was suggested that (we) bought it, and I just assumed that that was for the company.

Q But you didn't know?

A I did not know.

Q Mr. Thorson, on direct examination you testified at page 585 of the transcript that although your knowledge was "very slight" of the United Electric-Truax merger discussions, there was not much interest on the part of Truax "if I remember correctly."

Mr. Thorson, did you ever speak with anyone from Truax or with any representative of Truax in regard to this matter?

A Never. I didn't know anybody over there at that time. Years ago I knew Mr. Truax, but in recent years, no.

Q You mentioned, Mr. Thorson, that the Truax-United Electric merger discussions were discussed "very brief," at the United Electric Board meetings. Do you recall, sir, who brought up the matter at the Board [866] meetings?

A I don't know. I think it may have been Mr. Morris. Wait a minute. Was Mr. Kolbe there then? I think Mr. Kolbe remained on, if I recall. Was it two years after I came on the Board before he stepped aside? Was it a year or two?

Q Yes, sir.

A I can't tell you who brought it up, but the chairman may have brought it up. That's all I can say. I can't say for sure. I remember that the matter was brought up once or twice in a very casual way and there was a rather short discussion, because there didn't seem to be

any interest on the other side. That was the conclusion I drew. The thing sort of fell of its own weight. That is the impression I got. I never pursued the matter.

[867] Q Is this impression based on comments which were made at the Board of Directors meeting by other directors?

A Yes, that there seemed to be a lack of interest on the part of Truax.

Q And on this basis you obtained this impression that Truax had a lack of interest?

A That's correct. That was just a supposition on my part.

Q Did you ever discuss the possible Truax-United Electric merger with any of the Crowns?

A No.

Q Mr. Thorson, Harold K. Pedersen, treasurer of General Dynamics, whose deposition is in evidence, testified as follows—

MR. HEDLUND: One moment, Mr. Cusack, if I may. May we have an opportunity to get the transcript so that I may follow it?

MR. CUSACK: I will lend you mine. Well, no, I don't have it.

MR. HEDLUND: I am sorry for the interruption, your Honor.

THE COURT: It is all right.

* * * *

[890] BY THE WITNESS:

A I would say that normally the securities are fully paid for at the time when the tender offer is effective. Now, there may be other arrangements made that I'm not familiar with.

BY MR. CUSACK:

Q Thank you, sir.

Mr. Thorson, you testified at page 588 of the transcript that Freeman was:

(Reading) "... very familiar with the problems of deep mining and offered the services in every way

they could to be helpful to United Electric in that area".

You also testified on Thursday at page 589 of the transcript in regard to the Round Prairie field, that:

(Reading) "It was suggested obviously that if they went ahead with that, Freeman would be very helpful or perhaps would be very helpful in undertaking that project."

Do you recall the June 10, 1964, Board of Directors meeting of United Electric, which meeting you attended, according to the minutes, and at which meeting, according to page 4236 of the minutes the [891] directors present unanimously approved options to lease "covering approximately 1,610 acres in Round Prairie Field, Perry County, Illinois, containing an estimated 9,658,023 tons of coal"

A Lease to who?

Q A lease to United Electric, sir. Do you recall that incident, the acquisition of 9,658,000 tons of underground coal at Round Prairie in 1964, June 10—excuse me, January 10?

A I must be frank and say that there were so many parcels of acreage acquired here, there and everywhere, that I can't specifically—I know that they were interested in Round Prairie, but specifically I can't give you a definitive answer. I'm sorry I don't remember.

Q Perhaps I can shorten this up, sir.

You do recall a number of occasions when you were a director that United Electric did acquire underground acreage at Round Prairie do you not, sir?

A Yes, that's right.

Q Mr. Thorson, do you recall what the arrangements were, if any, whereby Freeman would be very helpful or perhaps would be very helpful in undertaking the mining of the Round Prairie Field?

[892] A No. Of course, I'm getting way over my depths as far as the coal business is concerned. My knowledge is very limited, indeed, and I hoped that this wouldn't get into that area, because I'm a novice.

I do know that—I've been told that Freeman had deep mining operations, that United Electric was a stripping operation, and that they tried deep mining once before and it wasn't successful, and I felt that they would lean heavily on the resources of knowledge and know-how that Freeman could help them with in this area, and that's just a generality, but that's the conclusion I reached.

Q Mr. Thorson, do you know, during the time you were on the Board of United Electric, whether the management of United Electric ever consulted with any other underground coal producer in regard to the Round Prairie Field?

A I don't know.

Q Mr. Thorson, was it not stated by the officers of United Electric at the Board meetings that United Electric itself planned to mine the Round Prairie Field?

A I don't recall that. I hate to be evasive, but I don't recall that. You mean alone, without the assistance of others?

[893] Q With perhaps using some other company's technical benefit being paid for by United Electric, but to mine it themselves?

A Well, I never drew the conclusion that deep mining in the Prairie Field was an imminent development. I sort of felt that was something for the future, correlated to the acquisition of other contiguous properties for another buyer, but if they decided to develop it, they would probably look to United Electric to develop the coal property, and this conglomerate referred to in the testimony.

Q But, was it not the intention when they had acquired additional reserves in that area that United Electric itself would undertake the mining of Round Prairie?

A I think perhaps that was the idea.

[894] Generally it was not thought by the directors that they would merely turn over a corporate opportunity in Round Prairie to Freeman?

A Oh, no, no, not in that sense. I think they were going to lean on them for some help that was offered by Mr. Nugent.

Q This help was to be reimbursed for, I assume?

A I presume so.

Q Mr. Thorson, do you recall a research bulletin of Paine, Webber, Jackson & Curtis of September 9, 1959 in regard to the coal industry in general and United Electric in particular?

A No, I don't as of today. I know we had one at that time. As of today, but I don't recall having read it in the past, and I didn't read it today for certain reasons.

MR. CUSACK: I would like the Reporter to mark for identification as Government Exhibit 109 Research Bulletin of Paine, Webber, Jackson & Curtis, Volume 23, No. 59, dated September 9, 1959.

(The document was thereupon marked as Government Exhibit 109 for identification.)

* * *

[902] Q In regard to the Industry Field, Mr. Thorson, as you recall that is the strip coal acreage located in Schuyler-McDonough Counties?

A Yes.

Q Is it not a fact, sir, that it was stated at United Electric's Board meetings that United Electric would someday mine the Industry Field?

A That was the implication. That's the conclusion I drew, yes, but it was a backlog reserve, not foreseeable future, but some way down the road.

Q Yes, sir.

Mr. Thorson, you testified at pages 586 and 587 of your direct examination that United Electric had a strip coal reserve problem, although you stated that:

(Reading) "I am no expert in the coal business. I want to make that eminently clear. But these discussions came up, and the enlarging of the reserves was very difficult to achieve and they had real problems."

Sir, the information which you obtained in regard to United Electric's reserves was at the Board of Directors meetings of United Electric, is that correct, sir?

A That's correct.

[903] Q The information which you had in regard to United Electric's reserves was from the officers of the corporation in general and Mr. Nugent in particular, would that be fair to say?

A It was carried in the annual reports, and the auditors certified the reports, so I felt there was integrity in the estimates of the reserves.

Q Yes, I understand.

Is it not a fact, Mr. Thorson, that Mr. Nugent was primarily interested in acquiring strip reserves at United Electric's four operating mines?

A I think he was interested in acquiring strip reserves almost wherever they were available, even as far out west as Idaho or Nevada, wherever we acquired some reserves.

Q Did you ever visit any of the mines of United Electric, sir?

A I never visited a mine, I'm almost ashamed to say, but I never have.

THE COURT: It's not too late.

THE WITNESS: Someday I will have an opportunity, I hope.

* * * *

[913]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

Before the HON. EDWIN A. ROBSON, Judge,
Tuesday, April 7, 1970,
10:40 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN, and
MR. RICHARD J. BRAUN,
appeared for Plaintiff;

MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,
appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM.

[930]

. . .

ROBERT W. STEELE,

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KEMPF:

Q Please state your name, sir.

A Robert W. Steele.

THE COURT: Will you spell your last name.

THE WITNESS: S-t-e-e-l-e.

BY MR. KEMPF:

Q What is your home address, Mr. Steele?

A 275 Southgate Drive, Dubuque, Iowa.

Q By whom are you employed, sir?

A I'm employed by Interstate Power Company, with general offices in Dubuque, Iowa.

Q What is your position with Interstate Power, Mr. Steele?

A I'm president of the company and chief operating officer, and I'm also a director of the company.

Q What is your business address in Dubuque?

A 1000 Main Street.

[931] **Q** Mr. Steele, when did you join Interstate Power Company?

A Nearly 30 years ago. I started with Interstate Power Company in 1941 as power sales engineer, and over the years have held various responsibilities in sales, in production department and on the corporate staff.

Q When did you become president of the company?

A I became president of the company on January 1, 1966.

Q As an executive with Interstate Power Company, have you played an active role in the company's plant construction and fuel procurement decisions?

A Yes, sir. I have been in the Engineering Department, I have worked in the Production Department, and over the years have participated in the decisions that have been affecting our company in regard to power

plant construction, substation construction, fuel procurement and the like.

Q Are you a professional registered engineer, sir?

A Yes, sir. I am registered in the state of Iowa.

Q Mr. Steele, could you describe for us [932] briefly the service areas served by Interstate Power Company?

A Yes, sir. We serve in north eastern Illinois, in northeastern Iowa, central Iowa and throughout the southernmost portion of the state of Minnesota.

Q I would now like to show you what has been received in evidence as Defendants' Exhibit 144, a map entitled "Investor-Owned Electric Utility Service Areas," and if you could step down and indicate on this map the specific service areas served by Interstate Power, I would appreciate it.

A The area served by Interstate Power Company is this blue area (indicating) in the general area I have just discussed, and it is labeled "63."

Q 63 identifies it as your service area?

A As Interstate Power Company.

Q What electrical generating facilities does Interstate Power Company operate, Mr. Steele?

A We have electric generating plants, three on the Mississippi. We have a large station at Clinton, Iowa, with gross capability of 256.5 megawatts; we have another plant located at Dubuque, Iowa, with a gross capability of 97 megawatts; we have another plant located at Lansing, Iowa, with a gross capability of [933] 65 megawatts. We have a plant at Mason City, Iowa, with a gross capacity of 27 megawatts; we have another plant at Albert Lea with 20.5 megawatts of capability; and, we have a plant at Fox Lake, which is near Sherborne Minnesota, with the capability of 114.5 megawatts.

[934] Q Your Lansing station, is that also on the Mississippi River?

A Yes, sir.

Q What is the fuel that is used by Interstate Power at its electrical generating stations?

A Well, we use a variety of fuels depending upon the time of the year, the plant, the various costs that are involved, so that we use various fuels throughout our entire system.

Q All right.

Turning to your three Mississippi River stations, what fuel do you use at your Clinton, Iowa facility?

A We use coal and gas, and the ratio there is about 80 percent coal, about 20 percent gas.

Q What fuels are you using at your Dubuque facility?

A There we're using coal and gas. This used to be predominantly a hundred percent coal plant, but in the last few years we have been burning approximately 50 percent coal and 50 percent gas, primarily because it is in a downtown metropolitan area, and air pollution is becoming a problem.

Q What about the Lansing facility?

[935] **A** The Lansing plant is predominantly—in fact, it's a hundred percent coal. We have not yet installed any gas capability at Lansing.

Q What fuel do you use at your Mason City plant?

A There we use a combination of gas and oil. We use approximately 80 percent gas and about 20 percent oil.

Q Do you have a coal capability at that plant?

A No, we do not. We used to have capability to burn coal, but it became uneconomical and we retired the coal facilities.

Q What about the Fox Lake facility in Minnesota?

A Fox Lake uses three fuels. It has gas, oil and coal. Approximately 23 percent of it is oil and 7 percent of it could be coal, and the balance in gas.

THE COURT: 7 percent or 70 percent?

THE WITNESS: 7 percent, sir.

THE COURT: 7 percent. All right.

BY MR. KEMPF:

Q Do you expect that you will continue to burn coal at that station?

A No, sir. While we do have the capability, the recently-enacted pollution criteria in the State of [936] Minnesota lead us to believe that rather than put in a million four hundred thousand dollar electronic or electrostatic precipitators, that we will probably change over to burning oil.

Q Finally, what fuels are used at your Albert Lea facility?

A There we use a combination of gas and oil. I believe there the breakdown is roughly perhaps 80 percent gas and 20 percent oil.

Q Are these various fuels, gas and oil and coal, in competition for the business of Interstate Power Company?

A Yes, there's a great competition for our fuel between not only the coal producers, but oil and gas, and, of course, there's always nuclear power that has to be factored into any generating that we're looking at today.

Q Where are the mines from which Interstate Power Company procures the coal which its Mississippi River facilities burn located?

A All of our coal that is burned in the Mississippi River plants comes from the Belleville District.

[937] **Q** Why is that?

A Well, the economics involved in the purchase of coal and the transportation to the destination at the power plant has to be considered as a whole, and these mines located near the Mississippi River, of course, have a short haul to the dock, and it has been economical for us to purchase our coal from this area.

Q You say they have a short haul to the Mississippi docks. Why is that?

A Well, this is short in comparison to other coal fields in the southern Illinois area.

Q What about design specifications? Are those a factor in your fuel purchasing decisions?

A Yes. As you know, a boiler is a very complicated piece of equipment, and the decision that must be made as to the design influences the cost of the eventual boiler, and we have designed our boilers to burn certain characteristic coals and this, of course, then leads us to the purchase of these coals over a long period of time to obtain the maximum efficiency of our boilers, and it has come about over the years that the Belleville district supplies us with the most economical coal.

Q Would you be able to burn coal from any midwest mines in your boilers?

[938] A No, we could not, because there are coals that have a different characteristic than what we would like to burn, and we have to keep at rather close tolerance on the coals that we purchase so as to not adversely affect our operating situation at our various power plants.

Q Could you give us some specific examples of situations where you would not be able to burn a particular type of coal?

A Well, we have designed our boilers for the purpose of burning wash coal, and so this would preclude some of the coals from being burned in our boilers, not to say that they couldn't be burned, but they would give us so much difficulty it would become a severe operating problem. Some of the fuels, the coals, have different fusion temperatures, and this, then, becomes a matter of operation.

Q Does Interstate Power buy any coal on the spot market?

A Almost none.

Q Why is that?

A Well, these power plants, of course, are heavy investments, and our requirement as a regulated industry to our customers requires that we maintain [939] adequate fuels and have the ability to purchase fuels over a long period of time to insure this reliability.

Q Of how long a duration are Interstate Power Company's coal supply contracts at the present time, Mr. Steele?

A Our present contracts are 10-year contracts. We have, of course, looked at these and would perhaps be interested in longer term contracts, maybe 15 to 20 years.

[940] Q Do you anticipate that trend toward these longer type contracts would continue in the future?

A Well, I am not too sure. A few years ago I would have said yes, but today, with nuclear fuel, with other problems that are facing utilities, I believe that we perhaps would be looking at shorter-term contracts.

Q Is Interstate Power presently operating any nuclear power generating stations?

A No, sir. We are not. We have participated in the research and development of the Pathfinder Plant that was built by Northern States Power Company. We have kept ourselves familiar with the technological advancement in the nuclear field, and each time we look at additions to our generating capability, of course, we would look at nuclear as a competitor along with the fossil fuel plants.

Q You also referred to other factors faced by a utility. Would one of those be air pollution?

A Certainly this is a situation that is coming to the front very rapidly, and utilities faced with prescribing to the regulatory criteria that are being issued state by state.

Q How would you characterize the degree of competition for the fuel and supply business of [941] Interstate Power at the present time, Mr. Steele?

A Well, the competition is there, because we have a number of coal suppliers who can supply us, and we also are being asked to use gas as a fuel more and more to combat air pollution. As I have indicated, we also look at oil, again because of the sulphur problem, and we also each time we view nuclear.

[942] Q What effect, if any, does the combined ownership of Freeman and United Electric by General Dynamics have on the competition for the fuel business of Interstate Power Company?

A I don't believe that this adversely affects Interstate Power Company, because we look at our supplier, United Electric, from whom we have been purchasing coal for over a quarter of a century, and I don't see any effect at all.

Q Do you see any adverse effect to your company if these two companies, United Electric and Freeman, were forced to operate independently?

A Yes, I do, because this has been of some concern to Interstate Power Company, and a number of years ago I reviewed with our operating people, our production people, the problem that we saw on the horizon, which was the diminishing reserves situation with United Electric, and this causes some concern as to what our future relationship would be with United.

Here is a situation where I think one compliments the other. Of course, reserves is a very critical part of the reliability factor for utilities in the years ahead.

MR. KEMPF: I have no further questions.

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[943] CROSS EXAMINATION

BY MR. BRAUN:

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[944] Q Can you burn any coal in your Kapp Station irrespective of its dust content?

A The answer to that, of course, is that you can attempt to burn anything that you can put into the boiler, but I must caution you that as a public utility we are charged with furnishing 100 percent continuity of service, and we cannot experiment with any and every type of coal. We know what our boilers were designed for. We know that we have to stay within a close tolerance. For us to jeopardize our reliability by taking any and all coals would not be wise.

Q Do you recall, Mr. Steele, filling out the Court's subpoena questionnaire with respect to the dust tolerance of your facilities at the Kapp Station?

A I recall looking at them and signing the letter that forwarded them in here, but it has been some time since I had seen these particular statistics that you refer to.

Q Do you recall specifying any dust content of the coal which can be burned at that facility?

A No, sir.

Q Is it not true that you can burn coal with sulphur content of less than 3.5 percent?

A You can burn coals that have varying amounts [945] of sulphur, yes.

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[951] Q With respect to your Dubuque station, Mr. Steele, what is the delivered price per million BTU's for coal?

A Well, again, you are testing my memory. As I pointed out, this information is in the subpoenaed documents. But I recall that our delivered fuel cost there is in the neighborhood of twenty-five, twenty-six cents a million BTU.

MR. BRAUN: Your Honor, may I confer with co-counsel for a moment? I do not believe this information is in the questionnaire.

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: I would like to state for the benefit of the Court, your Honor, that the responses to the subpoena questionnaires are not in evidence, but in the light of comments made by counsel, we will put them in our rebuttal case. We also will put in a summary of the information contained therein.

MR. KEMPF: The original letter of last June by the Government indicated they were going to put these in. Besides, that, the parties have reached an agreement [952] that either party is free to use the subpoena answers.

THE COURT: Then it is not necessary, and the record may show that this witness has responded and that they are of record and that will cover it.

MR. CUSACK: Thank you, your Honor.

MR. BRAUN: May I confer with co-counsel again, your Honor?

THE COURT: Yes.

(There was a short interruption, after which the following further proceedings were had herein, to-wit.)

MR. BRAUN: I apologize for delaying you.

THE COURT: It is all right.

BY MR. BRAUN:

Q Mr. Steele, can you tell me in cents the delivered price per million BTU's of gas, firm rate gas, in Dubuque? That is, delivered to your Dubuque generating station.

A Well, we purchase no firm gas, so I cannot give you the price of firm gas.

Q Can you give me the price of firm gas in Clinton, Iowa, at your Kapp station?

A Well, there again we purchase no firm gas for our Clinton station.

.

[956] Q Is it not a fact that the proposal they made to you in order to bring gas into your station at Lansing was uneconomical?

A I believe that when we analyzed the proposal, it would not be economical for Interstate to make the expenditure to add oil burning facilities to our plant and buy at that particular price.

Q You also considered the possibility of oil burning facilities at Lansing?

A Excuse me. I meant gas burning facilities.

Q Have you considered the possibility of using oil burning facilities at Lansing?

A We have always discussed every alternate fuel and looked at it, and we are doing so more in recent years because of air pollution.

Q And this alternate fuel oil was also rejected at Lansing as being uneconomical?

A I don't recall that we went through to the final determination on oil.

Q Is your Fox Lake station presently burning oil with a sulphur content of approximately 3 percent?

A Again I would have to say that I am not that familiar with the sulphur content of every oil that we purchased, but we are burning oil in our Fox Lake plant from time to time.

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[959] Q Now, you were asked on direct examination several questions about the Pathfinder Nuclear Plant. Do you know at the present time what fuel that plant is burning?

A Yes, sir. The present Pathfinder Plant, of course, has been discontinued as a nuclear reactor plant because it was not feasible, and it has been phased out with the approval of the Atomic Energy Commission, and the owner of the power plant, Northern States Power Company, has installed oil-burning steam generators to

take care of their steam requirements at this particular power plant.

Q I take it, then, that Interstate Power is no longer a participant in this experiment?

A That is correct. Our participation discontinued at the time the research and development came to an end.

Q Because of your experience with the Pathfinder Plant, you attempt, do you not, to keep yourself aware of the developments in the nuclear field?

A The answer is yes, and since that time of our discontinuance with the Pathfinder Plant, the Interstate Power Company has entered into a study with several other [1960] utilities in the Midwest area with the consulting firm of Black & Veatch from Kansas City to study the feasibility of a molten salt reactor.

Q Has any conclusion been reached with respect to the feasibility of that reactor at the present time?

A No, sir. At the present time they are just concluding phase 1 of the study and are preparing to enter into the phase 2 area.

Q Could Interstate Power Company alone consider building a nuclear plant, given its present size and kilowatt capacity?

A Well, when you say could we consider, certainly we could consider many alternatives for adding to our generation.

You have referred to our size. I think we have a capability as of last December in our system of some 590 megawatts. Our peak last summer was in the neighborhood of 411 megawatts. So, we have some reserve. Our next unit, as we forecasted in the five-year forecast, will probably be other than base loaded plants because of the situation of our particular system, but certainly in the years ahead when we envision the possibility of putting in another base loaded plant, we feel that we would have adequate size to finance and construct and operate a nuclear power plant.

[1961] Q Do you have an opinion, Mr. Steele, with respect to how large in kilowatt capacity a nuclear plant would have to be in order to be competitive in any part of the system you serve?

A Are you talking as of today?

Q As of today.

A As of today, of course, conditions have changed very rapidly with the cost of nuclear power plants, and like everything else, all power plant costs have gone up. At the present time, with the high cost of money, the fact that nuclear power in its total cost, because of the high fixed charges involved and the fact that we are situated on the Mississippi River with power plants that are available to reach the more economical coal fields in Illinois, I doubt that we could justify at the present time building a nuclear power plant.

Q Thank you, Mr. Steele.

At some point in the future, Mr. Steele, how large a plant would you have to build in order to compete economically with any other fuel in any part of your generating area?

A Well, that question is a little difficult to answer because the factors all change, and at the [1962] present time a nuclear power plant in our particular area has been described by certain more technical experts than myself that you would perhaps have to build an 800 megawatt unit to reach the economical points.

Now, as to the future, whether the conditions will remain the same, the cost of money, various factors that are involved in the total over-all concept, I wouldn't be able to answer a positive statement.

Q Mr. Steele, has your company made studies or projections of the peak kilowatt demand which Interstate Power Company will face over the next 10 years?

A I don't think we've gone 10 years, but we do forecast 5, 6 and 7 years in advance and, of course, we are updating these each time we reach a new peak, and the answer is yes, we have forecast what our requirements would be for a number of years ahead.

Q With respect to your projection of five or six years hence, do you project that your peak load will have reached 1200 megawatts by that time?

A No, sir, not in that period of time. As you know, the electric utility industry has had a past performance of doubling about every ten years, and this has been true with Interstate, so if we are at 600 or [1963] close to

600 megawatts of capability, it will be perhaps ten years into the future before we would reach the 1200 megawatt figure that you have just mentioned.

Q In the meantime, Mr. Steele, is it true that you will rely on coal to generate a good portion of your electric generating requirements?

A Well, I would say that we would certainly rely to a great extent on coal for our power plants, based again on the competitiveness of the fuel, and in comparison with the studies that we make as versus the cost of gas and oil, and we are always studying the possibility of buying or owning jointly power plants with our neighbors whom we are interconnected with.

Q Mr. Steele, has Northern States Power Company—

MR. BRAUN: I will withdraw that, your Honor.

BY MR. BRAUN:

Q Mr. Steele, did you last renegotiate your coal contracts in 1966?

A I believe it was 1965, 1966 period.

Q How many different companies, coal companies, did you contact with respect to that renegotiation?

A Oh, we contacted a number. As to the exact number, I can't recall, but I know that we contacted [964] at least five or six companies and visited with them.

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[969] Q You decided then to add a fourth supplier sometime between 1965 and 1966?

A Yes, sir, we did, and I might say that primarily it was based upon our concern for the reserves that United Electric were indicating to us.

Q Did United Electric make their back-up reserves of Freeman available to you?

A I can't recall that this was ever stipulated.

Q So that there was no willingness that you know of on the part of United Electric to make Freeman's reserves available as a back-up?

MR. KEMPF: Your Honor, I am going to object. That is the same question he just asked and the witness just answered.

THE COURT: He may answer. Let's proceed.

BY THE WITNESS:

A Repeat the question, please.

THE COURT: Read the question.

(Question was read by the reporter.)

BY THE WITNESS:

A Is that the question you wish answered?

BY MR. BRAUN:

Q Yes, sir.

A I don't recall that this was a part of it. It may have been. As I say, some of the conversations [1970] that they conducted with Mr. Carlson were, of course, never fully related to me.

* * * *

[1984] Q Prior to 1965 would Interstate Power Company have purchased coal on its lowest delivered BTU basis?

A We always have tried to purchase coal on the lowest delivered possible basis consistent with deliverability and facilities that we have to handle it. There are many factors involved, not just straight price.

Q Prior to 1965, Mr. Steele, has the Interstate Power Company ever purchased coal from the Freeman Coal Mining Corporation?

A I can't recall that we did, but this is a period of time, and my memory may fail me. I know that these people have called on us in the times past. I think you asked that question when you were in my office, and we researched it, and I think we showed you some cards from the Freeman Coal Company salesmen who stopped in our office.

Q Did you not also inform me at that time that you had indeed purchased from Freeman Coal Mining Corporation?

A We may have purchased some small tonnage, but not anything larger or of consequence to our total requirements.

* * * *

[987] BY MR. BRAUN:

Q And the additional statement at page 205, where Mr. Hedlund asked Mr. Morris on direct:

"Q Would you tell us what responsibilities after 1959 in your role as president you had with respect to the contracts of United Electric Coal Companies?

"A Reports were made to me on all of the activities of our sales department as to what they were doing, and where, and I still had over-all supervision over sales as president, and the vice president of sales reported to me and kept me informed as to what was going on after I became president. I personally took part in discussions with some of our major customers, [988] particularly Union Electric, Northern States Power, Interstate Power and Central Illinois Light."

Were you aware of that testimony when you answered that question with respect to adverse effect on your company, when Mr. Kempf put that question to you on direct?

A No, sir, I have not seen any of the testimony in this particular case.

Q If Mr. Morris, in discussing the contract prices with the Freeman Coal Mining Corporation—if this resulted in an increased price, assuming that it resulted in an increased price to Interstate Power Company, would this have an adverse effect upon Interstate Power Company?

A Well, any increase in price from any of our suppliers would cause us to reanalyze our entire situation and our purchase requirements. As to the amounts of the increase, what the outcome would be would be difficult to speculate on.

Q Does Interstate Power Company consider that price competition is of benefit to it?

A Well, I would say that all competition as it affects the prices of the various fuels would be [989] beneficial if it has a tendency to lower the delivered cost of the fuel to us, no matter what the fuel is.

Q Does Interstate Power Company believe that a discussion of prices between two of its suppliers is likely to be of benefit to Interstate Power Company?

A I am sorry, but I don't think I have the ability to answer that question. It calls for speculation on my part.

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[993] Q Are you at all concerned, Mr. Steele, about [994] the extent of the total coal reserves, that is, mineable coal reserves, available to Interstate Power Company in Illinois? Are you at all concerned about running out of those reserves?

A Well, I am sure that we are concerned about mineable reserves, and the best information I have is that there are a lot of reserves still available for mining. What the economic factors will be at the time these reserves are opened up, I don't know. But certainly we are concerned about reserves. But we are looking more to the West for coal as well as to Illinois, primarily because of air pollution.

Q Mr. Steele, would it be more economical to use pollution control equipment on your Mississippi plants as opposed to bringing in coal from the West?

A Well, at the present time we have a very expensive electronic precipitator on our new plant at Clinton, Iowa, which we installed and made the commitment for years before air pollution became a headline item. Prior to that we had made an expenditure as a company for mechanical precipitators at our Dubuque Plant. So we already have expended money to control air pollution. We have quite an air pollution control program within our company. The burning of additional gas as we can [995] obtain it is a part of this.

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[996] Q Would that be more true if some of the reserves were located in the Belleville district?

A I would have to agree that if this was in the Belleville district and we were depending on this particular coal company and were buying coal at the particular time and our long-term requirements were such

that it would mean we would have to develop additional reserves, why, yes.

Q Did you come here today under subpoena, Mr. Steele?

A No, sir.

Q You came here voluntarily?

A That is right.

MR. BRAUN: I have no further questions.

MR. CUSACK: Excuse me, your Honor. May I confer with Mr. Braun?

THE COURT: You may. Let's proceed.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: Just three more questions, your Honor.

THE COURT: All right.

BY MR. BRAUN:

Q Mr. Steele, what information do you have with [1997] respect to the coal reserves of United Electric?

A I don't have any specific tonnage at the present time, but I know that in our analysis of our coal requirements and in our discussions with United Electric personnel and in our meetings with other companies and with other electric utility companies, in talking to their personnel, we formed a judgment that there was a reserve problem, and back at the time that we were negotiating these new contracts, we so talked to United Electric about this particular problem.

Q So is it fair to say, Mr. Steele, that a good deal of your source of information about United Electric's reserve situation comes, in fact, from United Electric?

A I can't tell you just what it is percentagewise, but it is a matter of numerous discussions with a number of people, and as to what the percentage was, I would be unable to give you a qualified amount.

Q And is it fair to say, Mr. Steele, that you did not learn from the number of people to whom you talked about the existence of United Electric's deep coal reserves and Round Prairie Field or Beaucoup Field?

A As I said before, in my discussion here today in response to your questions, this may have been covered [998] with some of our personnel, but not with me.

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REDIRECT EXAMINATION

BY MR. KEMPF:

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Q You also discussed the fact that you were a member of a pool and were interconnected with other companies.

Were the decision made to install a nuclear facility within your system, would it be your expectation that a portion of the generation of that facility and in particular that portion which exceeded your own demand would be sold to your interconnecting pool members?

[999] A It could be handled that way, either sold on a firm basis for a period of years, or there are presently plants being built in joint ownership where each participant owns a portion of the unit.

Q Questions were asked of you concerning the Freeman and United Electric affiliation. When and how did you learn of this affiliation?

A As I recall, we were visited by United Electric people maybe 10 years ago and advised of what was taking place with United Electric.

[1000] Q This is in regard to its affiliation with Freeman?

A Yes.

Q You were asked whether it made any difference to you whether coal came from deep mines or strip mines from the Belleville District. My question is assuming that United Electric were not affiliated with Freeman and did not have the access to Freeman's deep mining technology and experience; under that assumption, suppose that United Electric were to come in to you as a utility executive and offer to sell you coal from a deep mine, notwithstanding the fact that they have no deep mine experience, what would your reaction be?

A Well, as I have testified, we always have felt or thought of United Electric as a strip mine company, not having any prior experience with deep mining, I would say that we would be hesitant about entering any commitment for coal from an unknown source, so to speak.

Q Your Savanna Station, which you discussed, is that operated at the present time?

A No, sir. This is retired in November of last year.

Q Would it be possible to truck coal into your [1001] Clinton Station from the mines that used to serve the Savanna facility?

A Yes. It would be possible to truck it, but the quantities that we require, the tonnages in this particular plant, far outstrip the ability to transport coal by truck economically.

Q During your period of acquaintanceship with the company's coal buying, have you ever experienced any price increases from The United Electric Coal Companies that would give any indication that there was improper conduct in terms of the relationship between that company and Freeman Coal Mining Corporation?

A No, sir. We have always dealt with United Electric and our other coal suppliers, I would say, and we have attempted to bring the price together if there was any variance at all.

Q Do you consider your Mississippi River facilities to be in the natural area to be served by mines in the Belleville District?

A Yes, I do, because of the close haul or short haul from the mines to the docks on the Mississippi and the fact that it can be barged up the river.

Q You indicated during your cross examination that you are a distributor of both gas and electricity. [1002] Do employees of Interstate Power Company actively attempt to convert industrial and home consumers of coal who are consuming only coal at their facilities to the use of natural gas instead of coal?

A Yes, sir. We have engineers who are actively seeking out the possibility of converting customers from other fuels to our gas supply.

1003] Q To the extent they are successful, the facilities in question consume less coal than they formerly did, is that correct?

A Yes. If they converted to gas.

Q Do you have any major customers who have made such conversions?

A Yes, we have. We have one of our ten largest customers, the Northwestern Portland Cement Company, at Mason City, that has phased out its own generation and the purchase of coal and is now taking its electrical requirements all from us rather than generating its requirements.

Q Did you indicate the name of the company?

A Northwestern States Cement.

Q You mentioned the possibility of burning more western coal in the future. What is the sulphur content of western coal? Is that low sulphur or high sulphur coal?

A It is lower than the coals we are purchasing at the present time, and I believe these coals are in the neighborhood of 1.5 percent sulphur.

Q Have you actually undertaken to begin investigation of this?

A Oh, yes, we have discussed this a number of times with companies.

. . . .

AFTERNOON SESSION—3:15 P.M.

. . . .

[1010] THE COURT: Are you ready to proceed?

MR. HEDLUND: Yes, your Honor.

THE COURT: Are there any matters to take up with the Court?

MR. HEDLUND: May we be off the record, please?

THE COURT: We may.

(Discussion held off the record.)

THE COURT: Back on the record.

MR. IRVING: The defendants at this time will call Mr. Thomas Latimer to the stand.

(Witness duly sworn.)

THOMAS H. LATIMER,

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. IRVING:

Q For the record, would you please state your full name.

A Thomas H. Latimer.

Q Mr. Latimer, what is your current home address?

A 111 West Prairie Avenue, Wheaton, Illinois.

Q By whom are you employed, sir?

A The United Electric Coal Companies.

[1011] **Q** What is your business address?

A 307 North Michigan, Chicago.

Q What is your current position with UEC?

A Manager of Lands.

MR. IRVING: I ask the reporter to mark for identification as Defendants' Exhibit 60-D a four-page document entitled "United Electric Coal Companies—Possible Reserve Acquisitions at Existing Mines," and I hand it to the witness.

(The said document was marked Defendants' Exhibit 60-D for identification.)

[1012] **BY MR. IRVING:**

Q Mr. Latimer, do you recognize this document?

A Yes.

Q Have I correctly described it?

A Yes.

Q Were the figures and information set forth in DX-60-D compiled and prepared by you, sir?

A Yes.

Q Mr. Latimer, what does this exhibit purport to show?

A It shows the remaining reserves and the potential acquisitions of reserves at our operating mines and the North Canton Field, which was combined with the Buckheart Mine.

Q Mr. Latimer, what procedure did you use in compiling the information set forth in this exhibit?

A Personal knowledge of the fields; the result of our drill records; investigation of old mine maps, geological reports, and so forth; drilling that has been done in the last year; drilling off these properties that have been mentioned.

Q What expertise or special knowledge do you have which qualified you to prepare this exhibit, sir?

A Well, I have been investigating coal — [1018] for a great many years, I believe since about 1939. I have investigated coal fields in, I believe, 12 states, and one province in Canada. I am thoroughly familiar with all of these properties of ours. I am minutely familiar with them, their ownership, the coal information available on them, and I think about everything there is know about them.

[1014] **Q** What first-hand knowledge, if any, have you had with respect to the facts set forth in this exhibit?

A I have quite complete first-hand knowledge of all of them.

Q Sir, what sources have you consulted in evaluating these properties?

A The sources that I mentioned, geological surveys, the mine maps, personal observation, outcrops results of our drill records on adjoining properties and nearby.

Q Sir, by "personal observation," does that include a physical examination of the tracts mentioned?

A Yes.

Q Pardon me?

A Yes.

Q Mr. Latimer, in what sense have you used the word "possible" in these charts?

A I believe they are available for sale to us and they, I know, contain some coal.

MR. IRVING: Your Honor, at this time defendants have no further questions.

THE COURT: All right. Are you offering the document?

MR. IRVING: Yes, we would at this time offer 60-D into evidence.

. . . .

[1016] CROSS EXAMINATION

BY MR. SIMS:

.

[1017] Q Mr. Latimer, do you recall making an estimate of the coal owned or available to UEC at their Banner Mine around 1956 to 1957?

A I don't think I remember preparing one at that time. I may very well have.

MR. SIMS: Your Honor, may I approach the witness?

THE COURT: You may.

MR. SIMS: Would the Reporter mark as Government Exhibit GX-119 the document entitled "Estimates for Proposed Acquisition and Operation of the Banner Property", dated January 10, 1957.

(The document was thereupon marked as Government Exhibit No. GX-119 for identification.)

BY MR. SIMS:

Q Mr. Latimer, I hand you what has been marked GX-119. Would you refer to the third page of this document entitled "Introduction", the second paragraph, which reads:

(Reading.) "The reserves owned and available on the Banner property according to Mr. T. H. Latimer's estimate are as follows:

[1018] "Owned or controlled by United, 3,180,000 tons; available on adjacent lands, 3,320,000 tons; to be acquired from Kingston River Terminal, 1,300,000 tons. Estimated total, 7,800,000 tons."

Mr. Latimer, does this refresh your recollection of any estimates you made?

A Excuse me, sir. I've lost it. I thought you said page 3.

Q The page really is not numbered. Sheet 3.

A Sheet 3?

[1019] Q Under the introduction of the second paragraph.

A I did not write this report.

Q Well, it does refresh your recollection as to the estimate, does it?

A That estimate is probably undoubtedly made by me.

Q Do you have any idea approximately how many tons of coal had been mined at the Banner mine to date?

A I would have to refer to the record.

MR. IRVING: That is a matter of record in this case, your Honor. The production figures for these mines is in evidence, and they would be the best record of this sort of information.

THE COURT: Is this a foundation question?

MR. SIMS: Yes, your Honor.

THE COURT: It is a foundation question. He may answer.

BY MR. SIMS:

Q Do you have an estimate of approximately the tonnage mined at the Banner mine to date?

A I think I would have to refer to the record.

* * *

[1032] BY MR. SIMS:

Q I think you testified in your deposition, Mr. Latimer, that you were not sure what drill holes had been placed in this property but that the overburden was too high at the time and UEC dropped this property or the options in this property, is this correct?

A I can't remember all of the drill holes, but the overburden was not only too high, but there were other troubles with it, too.

Q Pardon?

A There were other troubles with the field.

Q What were the other problems with the field?

A One problem was that the rock overburden was so high it would be impossible to work a wheel excavator in there. The average overburden was nearly a hundred feet. We found that the mine, although there were no maps to show it, the center of the hill had been mined completely through from crop to crop, and there was probably less than 3 million tons in the field.

[1033] Q You stated during your deposition, Mr. Latimer, that you were not real sure how many tons were remaining in the field. Have you done any work in that area since the time of the deposition that was in December, 1968?

A In the King Hill area?

Q Yes, sir.

A An estimate could be easily prepared in our office.

Q Approximately how many drill holes did you put down in the area?

A I don't remember.

Q Are you in a position at the present time, Mr. Latimer, to say that this area will not be mined by UEC economically in five years?

A In five years?

Q Yes.

A I don't see how it could be.

Q Of course, you would not know what economic conditions would prevail in the coal industry in five years, would you?

A We have no equipment in the vicinity capable of mining it.

Q You, of course, can, however, purchase equipment [1034] ment that will mine a hundred feet of overburden, can you not?

A Not to mine three million tons, or less.

Q If you had other tonnage available to you, Mr. Latimer, would you consider in five years mining this property?

A That's a matter of conjecture.

MR. SIMS: Would the reporter mark as Government Exhibit 122 a document from R. H. Inman to R. J. Hepburn entitled "No. 2 Coal South of Illinois River" dated August 5, 1959.

(The document was thereupon marked as Government's Exhibit 122 for identification.)

THE COURT: Do you have a copy of that for the Court, Mr. Sims?

MR. SIMS: Yes.

. . . .

[1041] BY MR. SIMS:

Q Would you also draw on that map the approximate location of UEC's Gayle Field?

A (Drawing)

Q Are you finished?

A Yes.

Q Approximately how far is the Gayle Field from the Fidelity mine?

A From which part of the Fidelity mine?

Q The closest point to the Gayle Field?

A Oh, perhaps two miles.

Q Do you know at the present time that the Gayle Field will not be mined when the Fidelity reserves are exhausted?

A No, I do not know.

Q Is it your belief that it will be mined?

A I think it a little doubtful.

Q Approximately how many reserves are estimated in this field?

A I will have to refer to the record.

Q You have no approximate estimate?

A No, I don't remember.

MR. IRVING: Your Honor, I might point out this information is in the record in the case.

[1042] THE COURT: Mr. Sims, if it is a matter of record, there is no reason you can't ask a leading question: "Is there approximately so many tons?"

BY MR. SIMS:

Q Mr. Latimer, is there approximately 1,000,500 tons of coal in the Gayle Fields?

A Whatever the record shows.

THE COURT: The reporter would like to know whether you meant what you said. I have that you said 1,000,500 tons. Is it 1,000,500 tons or 1,500,000 tons?

MR. SIMS: 1,500,000 tons.

Would the reporter mark for identification Government's Exhibit 124, please. This is a letter from T. H. Latimer to George Heap, which was identified in Mr. Latimer's deposition as Latimer Deposition Exhibit 30.

(The document was thereupon marked as Government's Exhibit 124 for identification.)

BY MR. SIMS:

Q Mr. Latimer, would you look at this document?

MR. IRVING: Your Honor, may I please have a more accurate description of the document? I was not able to hear Mr. Sims.

THE COURT: Read the description.

(Record read by the reporter.)

* * * *

[1066]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

Before the HON. EDWIN A. ROBSON, Judge,
Wednesday, April 8, 1970,
10:30 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,
appeared for Plaintiff;

MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,
appeared for Defendants.

ALSO PRESENT:

MR. JAMES FOLSOM

. . . .

[1070]

E. C. HILL,

called as a witness by the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Would you please state your name and present occupation?

A My name is E. C. Hill. I'm presently president of HILCO, Corporation. It's a coal brokerage firm with offices in Chattanooga, Tennessee.

Q Are you a resident of Chattanooga, Tennessee?

A Yes, I am.

Q Mr. Hill, were you formerly employed by the Tennessee Valley Authority?

A Yes, sir, I was.

Q Beginning in what year?

A I joined TVA in 1951.

Q Approximately how long were you with TVA?

A A little over 17½ years.

Q Would you please briefly describe the positions that you held with TVA and your responsibilities during [1071] the course of that 17 years.

A When I joined TVA in 1951 I was employed as a general buyer, buying primarily fuels, lubricants, fuels such as gasoline, diesel fuel, oils, greases, welding equipment, supplies and that nature, and after about eight months of employment I moved into the field of coal buying for TVA. I was a general buyer for them in the beginning. The latter part of 1951 I moved up to additional responsible jobs in the coal buying end of it, and in 1954 I was made assistant chief of the coal procurement branch. In 1956, I was made chief of the coal procurement branch. I held that position until 1966, when we took on nuclear fuel buying, and the position's title was changed to fuels procurement, which included coal and nuclear fuel.

Q Mr. Hill, the Tennessee Valley Authority is an instrumentality of the Federal Government, is that correct?

A Yes, it is.

Q It is not an investor-owned utility?

A No.

Q Mr. Hill, I direct your attention to what has been received in evidence as Defendants' Exhibit 144, which is a map of industrial-owned electric utility [1072] service areas, and I wonder if you could indicate on the map generally the geographic confines of the services areas of TVA?

THE COURT: You may step down, if you desire.

THE WITNESS: Yes.

MR. HEDLUND: Your Honor, I am not sure you have a copy of the map. Here is one.

THE COURT: I can recall it. Give me the number of the district. I looked at it—

MR. HEDLUND: It is not numbered, your Honor.

THE COURT: Oh, it is not numbered. All right.

MR. HEDLUND: Well, I will ask the witness to describe it.

BY THE WITNESS:

A This area which encompasses the State of Tennessee is the base operating area of TVA. TVA does cover certain segments of Kentucky, down into Alabama, certain segments of Mississippi, over into Georgia, North Carolina and Virginia.

[1073] BY MR. HEDLUND:

Q Generally is its service area within this blank white area in the states that you mentioned?

A Yes, it is.

THE COURT: May I inquire, does it extend over into Missouri, that white area?

THE WITNESS: No, sir, it does not go that far.

THE COURT: It does not. All right.

BY MR. HEDLUND:

Q Mr. Hill, would you please describe briefly the generating, electrical generating facilities and plants of TVA.

A Well, TVA is a government agency created in 1933 by an act of the Congress of the United States. It initially was primarily a hydrogenerating entity. Well, it was created to develop the Tennessee River, to eliminate floods, create navigation on the Tennessee River, and to also provide power to the area in which it was located.

Initially it was made up primarily of hydrogenerating facilities, but as the load growth increased, hydro capacity was not adequate to fill the needs, so TVA went more into the field of steam generation, and in the early 50's, late 40's, TVA made a [1074] rather substantial move in the steam generating field and built a large number of coal-fired steam electric plants.

Q Could you tell me at the time that you left TVA the numbers and types of generating stations which it had on line at that time. Let me start first by asking how many hydroelectric generating facilities TVA had in approximately 1968.

A TVA had approximately 40 hydrogenerating facilities at that stage. It had 10, as I recall, coal-fired steam electric plants.

Q Stopping for a moment on the coal-fired plants, could you briefly describe the location and the size of the principal coal-fired generating stations of TVA.

A The coal-fired stations represent about 14,000,000 kilowatts capacity in the TVA system, with hydro capacity amounting to about 4,000,000 kw. The coal-fired plants are built—two plants are located in the West Kentucky coal field. Others are located in Tennessee and Alabama.

Q What are the names of the two principal facilities located in the West Kentucky coal field?

A The Shawnee plant located near Paducah, [1075] Kentucky, is a 10-unit facility, each with a rating of 150,000 kw. The other plant, the Paradise plant, is located near Central City, Kentucky. It presently has three generating units. Two of them are rated at 715,000 kilowatts each. The third, which has only recently been placed on line, is a 1150 megawatt, or 1,150,000 kw. unit.

Q As of 1968 did TVA have either an order or under construction or in planning any nuclear fuel generating units?

A Yes, it did. TVA entered the nuclear power generating field in the fall of 1966. At that time we placed orders for two boiling water reactors to be built by General Electric Company and we added a third unit boiling water reactor from GE to the plant. This plant, the first nuclear plant, is known as the Brown's Ferry plant near Decatur, Alabama. These three units are rated at about 1100 megawatts each, and then in the—

Q Excuse me for interrupting. That would then be at Brown's Ferry a total of 3300 megawatts of generating capability?

A Approximately, that is correct.

Then the second plant, nuclear plant, which TVA has on order is named the Sequoia plant, which is [1076] just north of Chattanooga, Tennessee. It consists of, or will consist of, two units that will be supplied by Westinghouse Electric Company, their pressurized water reactors. The ratings on these units are approximately 1150 megawatts each. This plant is not yet under construction. Contracts were made while I was still with the TVA for the supply of the equipment and the initial fuel supply, but AEC has not yet granted a construction permit for that plant.

[1077] Q When the Sequoia Plant is finished, and you mentioned that there is another coal-fired plant under construction by TVA, can you give me some idea of the breakdown between coal and nuclear in terms of the percentage of generating capacity that will be coal and the percentage that will be nuclear?

A TVA presently has about 15 million. There has been an addition to the TVA system coal-fired units since I left in August of 1968. They added this third unit at Paradise which is a 1,150 megawatt unit. So, roughly, they have 15 million kilowatts capacity in coal-fired units at this stage.

They have also since I left entered into a contract—well, I will back up.

We made this contract for an additional coal-fired plant while I was still with TVA. This was for two 1,300-megawatt units to be located at a site about 50 miles west of Nashville, Tennessee, on the Cumberland

River. The plant will be called the Cumberland Plant. These two units will add 2,600 megawatts of additional capacity, making about 17,500 megawatts of coal-fired capacity and about 5,600 megawatts of nuclear capacity.

Q I believe you mentioned it before, but what [1078] will the total capacity be with respect to hydroelectric?

A About 4 million. There is little likelihood of much addition of hydro capacity except for a peaking plant that TVA has recently announced. They announced a Rocky Mountain Plant, they call it, which is going to be a pump storage facility. It will have a capacity, as I recall, of about 1,400 megawatts. It will add to the present hydro system or is a more or less conventional hydro system. This will be the first entry into the pump storage type facility for TVA.

MR. HEDLUND: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. HEDLUND:

Q Mr. Hill, I hand you what has been received in evidence as Defendants' Exhibit 103 which is a document entitled "Comparison of Coal-Fired and Nuclear-Powered Plants for the TVA System" which carries a date on the second page of June 1966.

Can you tell me briefly the circumstances under which this was prepared or why it was prepared?

A This report was prepared because of TVA's entry into the nuclear-powered generating field. It was a new field for TVA.

[1079] Because of the size of the units that TVA was contracting for, nuclear units, we felt that the nation as a whole needed some explanation for this particular move on the part of TVA. So, this report was prepared by a number of people in TVA with this primary objective in mind, to give a good explanation for the TVA supply area as well as the nation as a whole for TVA going into the nuclear power generating field.

Q I direct your attention, sir, to page 15 of that document.

A Yes.

Q Under "Conclusions," the first sentence reads as follows:

"It is evident from the results of the evaluation that the nuclear alternatives have a decided advantage over the coal-fired plant, and that either a BWR or a PWR nuclear plant at Brown's Ferry would be a decided economic choice over a coal-fired plant at Cumberland City."

Do you know, Mr. Hill, whether at the time this was prepared that that was a true and accurate statement? [1080] A That was a true and accurate statement at the time that this was prepared.

Q There is, is there not, coal mining in substantial sections of the state of Kentucky and of Tennessee?

A Yes, there is. In west Kentucky as well as east Kentucky, coal is produced. Coal is produced in east Tennessee. There is no coal produced in west Tennessee.

Q Is there coal presently being produced, if you know, in the state of Alabama?

A Yes, there is.

MR. HEDLUND: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. HEDLUND:

Q Mr. Hill, I hand you what has been received in evidence as Defendants' Exhibit 116 which is a document published by the United States Atomic Energy Commission, Division of Technical Information, and it is entitled "Nuclear Power Briefing for the Coal Industry, September 29-30, 1966, Oak Ridge, Tennessee."

Mr. Hill, did TVA participate in this nuclear power briefing?

[1081] A One of TVA's officials did appear on the program in this briefing, yes.

Q Were you present at this briefing?

A Yes, I was.

Q I would like to direct your attention, if I may, to page 192 of this document where the following is stated in part, beginning in the middle of the page.

By the way, just for the record, this page 192 is part, is it not, of a presentation made by G. O. Wessenauer, Manager of Power of the Tennessee Valley Authority, is that correct?

A That is correct.

Q Returning to page 192, the following is stated:

"Today nuclear power offers an alternative to coal-fired thermal plants and portends to be an even stronger competitor for meeting future needs. We expect that coal will leave no economic stone unturned in meeting that challenge. TVA will continue as in the past to evaluate and to compare before deciding on future plants. With those of you who produce coal and those who transport it, TVA has a mutual interest. It is to keep the delivered cost of coal competitive."

[1082] Sir, I ask you whether you agree or disagree with the statements that I have just read?

A Yes, I agree with the statement that was made by Mr. Wessenauer.

[1083] Q Mr. Hill, in your opinion, does coal compete with nuclear energy, gas, oil and hydroelectric power for the energy business of TVA?

A Yes, it does.

Q Approximately how many tons of coal does TVA presently consume or did it burn in 1968, your last year with them?

A Slightly over 28 million tons in 1968.

Q How would that rank TVA in terms of coal-burning utilities across the country?

A Well, TVA is and has been for some time the largest coal-burning utility in the United States.

Q Are you aware of the affiliation of the Freeman Coal Mining Corporation and The United Electric Coal Companies?

A Yes, I am.

Q When did you first become aware of this?

A Well, the formal affiliation as I recall took place in the late 50's, about 1959, but there had been an affilia-

tion of sorts, according to the information that had come to me, even in years earlier than 1959.

Q What was that information?

A Well, I had bought coal in my position with TVA from both the Freeman Coal Mining Corporation and The [1084] United Electric Companies for several years. I had what I feel were good relations with the officers of those companies. We discussed their various activities on a number of occasions. I was informed by some of the officers of the company of the association between the two companies.

Q This was prior to 1959?

A Yes, that is correct.

Q In that time prior to 1960 which you have just referred to, did United Electric operate a mine in West Kentucky?

A Yes, they did, the Buffalo Creek Mine.

Q Do you recall also whether or not they had a sales agency relationship with another mine in west Kentucky?

A Yes, they did. They had a sales agency relation with a company, Ruby Chandler Jordan, as I recall.

Q Mr. Hill, I hand you what has been received in evidence as Defendants' Exhibit 104 which is a letter from you to Bart, dated October 17, 1962, and Defendants' Exhibit 105 which is a letter from Barton R. Gebhart, vice president of Freeman Coal Mining Corporation to you, dated October 18, 1962.

Initially, while Defendants' Exhibit 104 [1085] is just signed Elmer and it is addressed to Bart, I assume the Elmer is you and that the Bart is Barton Gebhart of Freeman, is that correct?

A That is correct.

[1086] Q Would you tell me, sir, the circumstances surrounding the exchange of this correspondence between yourself and Mr. Gebhart.

A This correspondence developed over a request by Mr. Gebhart to me to authorize Freeman Coal Mining Company to supply a portion of the requirements of this contract No. 401T3 that we had entered into with the Freeman Company, to supply a portion of it from the

United Electric Coal Companies mine, the Fidelity mine in Belleville, in the Belleville district of Illinois.

Q You state on Defendants' Exhibit 104, at the conclusion, "I feel that the contract is good for both of us and that we will certainly reap mutual benefits from it."

To what benefits as far as TVA was concerned were you referring?

A The primary benefits that I could visualize for TVA was this. I had been trying for some time to get greater participation from the Illinois coal field in TVA's market. TVA was becoming more and more dependent on the west Kentucky coal field for its coal supply. We were buying more than 30 percent of the total production from the west Kentucky field. It had reached a state of about 55 percent of total supply for [1087] the TVA system from that one field.

The Shawnee steam plant, which is located near Paducah, Kentucky, is relatively close to the southern Illinois coal field, some distance of 50 miles or so. I was seeking to supply that plant, and did for the time I was with TVA, with Illinois coal so that west Kentucky coals could be available for plants to the south of the producing field.

This move to authorize production from the Belleville field for the Shawnee market, I felt, was quite beneficial. It permitted TVA to enter into it on a volume basis for supply from an area from which it was not then receiving coal and had never received any significant amount of coal. So, for this reason, I felt this was a good move for TVA.

Q If you know, could United Electric have on its own competitively offered to supply coal to TVA at this time?

MR. SIMS: Your Honor, I object to this. This is highly speculative. He wouldn't have knowledge of what UEC could do.

THE COURT: Well, if he does, he may answer. I do not know whether he does or not.

BY THE WITNESS:

A The only way I can answer such a question as [1088] that is that the Belleville district from which the

United Electric coal or the Fidelity mine is located was not and had not participated in the TVA market. I assume it was because of economic factors. The quality of the coal from the Belleville district is somewhat inferior to the coal from the southern Illinois fields. So, for this reason, I would conclude that it is highly unlikely that they would have or could have competed with the other sources of coal for that Shawnee plant supply.

BY MR. HEDLUND:

Q What other sources are you referring to?

A The other sources are the west Kentucky coal field and the southern Illinois coal field.

Q Mr. Hill, in your opinion, and based on the facts that you have just stated, after the closing of United Electric's Buffalo Creek mine and the termination of the sales relationship with the Ruby mine, had they been independent of Freeman, would they have been able to compete with Freeman for the business of TVA?

A After the closing of the Buffalo Creek mine?

Q That is right.

A After the closing of their operations in the west Kentucky coal field, which moved them out of a [1089] normal source, a normal area of supply for us, I would question seriously that they could have competed.

Q Mr. Hill, do you recall the subpoena questionnaire that was sent to TVA in connection with this case?

A Yes. I think it came in connection with—as a subpoena. I recall some request for information from the Justice Department on this case, yes.

[1090] Q The reply to that subpoena indicates that in 1967 TVA purchased 84,000 tons of coal from Peabody's Mine No. 10 which the evidence shows is located in the Springfield Freight Rate District of the State of Illinois. Would you explain, sir, the circumstances under which that purchase was made?

A Yes. That was an unusual development. TVA had never bought any coal from what we classified as Central Illinois coal field, but just prior to the time this purchase was made, we had had several interruptions in production in the West Kentucky as well as Southern Illinois coal

field due to labor disputes. These were not industry-wide disputes, not national in scope, but were disputes that had interrupted production for intervals of a few days, a week, two weeks, and as a result of these interruptions the inventory at the Shawnee Plant had been reduced to a relatively low level. We had let the Shawnee Plant inventory drop more rapidly than we had other plants because we had the two fields from which we could draw coal. Plants such as the Johnsonville Plant or Gallatin Plant, which are both in West Tennessee were deriving their total supply from West Kentucky, so we let coal go on to those plants and two more on the inventory from the Shawnee Plant.

[1091] The inventory at the Shawnee Plant at the time that this purchase was made had dropped to a level of only about 115 or 120,000 tons, as I recall. There was a dispute in existence in the West Kentucky field at that time. In fact, the total West Kentucky field was out of production because of a labor dispute. It was a wildcat dispute, if I may term it as such.

It had been in effect for some ten days or so. We did not know how long it might last. Since the inventory at Shawnee was down to a level of ten days or so, we felt it was necessary for us to act under emergency conditions and seek to obtain additional coal from whatever source might be available. With my knowledge of sources of supply in the areas surrounding the TVA system, I concluded that the Peabody Mine No. 10 might be the best alternative.

Q Why was that, if you can recall?

A Well, it was and is one of the largest coal producing companies or mines in the United States. At that time I was buying from the Peabody Company out of West Kentucky about 5 million tons of coal a year. I had good relations with the officials of the Peabody Coal Company, I talked to the chairman, Mr. Merl Kelce, and I told him we needed some assistance, we needed [1092] help, we didn't know how long this dispute might last in West Kentucky, we couldn't afford for it to go on more than another week because it could interfere with the operation of the Shawnee Plant. I asked him if he could help me in providing

additional coal. He said he did have some stored coal at the No. 10 mine and that he could run the mine on a week-end for me if I was willing to pay the price. I told him we had to have the coal, and I asked him to be tolerant with the price. He agreed that he would ship me the coal at a price 25 cents a ton higher than the price he was receiving from his other customer.

[1093] Q Who was the principal customer of that mine at the time, if you recall?

A The principal customer was Commonwealth Edison Company.

I made the contract for the supply, based it with an open end, that they would ship me over a week-end some 30 to 40,000 tons of coal. The mine would be operated on a Saturday, and I didn't have a transportation rate at that time.

Q Do you recall with respect to this 34,000 tons of coal how many days it took you to get this shipment? I mean, was this something that went through the course of a month, or was it a shipment—

A No, it was a very short interval. It was shipped within a period of about four, five days, as I recall.

Q I notice from the reply to the questionnaire that the transportation on that coal was \$2.50 a ton, just transportation.

A Yes.

Q That is just a little bit less, is it not, than the FOB mine price for coal which you were purchasing at that time from west Kentucky?

A I was buying some spot coal at that time at [1094] mine prices that were lower than the price, the transportation cost, on that particular coal. This was considerably higher transportation rate than I was normally paying for coal from the Shawnee plant. Normal transportation rate was 85 cents a ton. I think I paid \$2.50 a ton on this particular supply.

Q By the way, just to get a feel for the 34,000 tons of coal, approximately how many tons, just generally, of coal did that plant consume a year?

A Well, that plant has consumed between four and four and a half million tons a year since it was placed in full service along about 1954 or '55.

Q You say 4.5 to 5 million tons a year?

A No. 4 to 4.5 million tons a year. It was burning in the order of 12,000 to 12,500 tons a day, seven days a week.

Q Mr. Hill, in the five years immediately prior to your leaving TVA, other than the shipments from the Fidelity mine and the Belleville district and the 34,000 tons from Mine No. 10 in the Springfield district, did TVA consume any coal produced in the entire state of Indiana or in the Belleville-Springfield or Fulton-Peoria districts of Illinois?

A Not to my knowledge.

[1095] Q I believe, sir, you mentioned the new 1,300 megawatt coal-fired unit that is being constructed by TVA. Have I correctly described it?

A Yes. There are two units on order, 1,300 megawatts each, that are being placed at a site west of Nashville, Tennessee, on the Cumberland River.

Q If you know, has the coal supply for those units been obtained?

A Yes. The coal supply for some 15-year period has been arranged for. This has been done since I left TVA.

Q Do you know what the arrangements have been or what they are?

A Well, I know where the coal will come from and I know that the Peabody Coal Company will be the supplier.

Q Is this coal owned by Peabody?

A No. The coal will be mined from property that is owned by TVA. TVA acquired the property from General Services Administration. It's property that was previously the Camp Breckinridge property, Army property used during World War II.

Q Do you know whether that is deep coal or strip coal?

[1096] A This would be deep mined coal, yes.

Q How many tons a year would be produced out of that mine?

A Well, there will be two mines, as I understand it, each that are scheduled to produce 3.5 million tons annually.

[1097] Q So, this new facility will consume about 7 million tons a year?

A Yes, that is correct.

Q Mr. Hill, in your opinion has the common ownership, and before that the affiliation of Freeman and United Electric had any adverse effect upon TVA?

A Not in my opinion, no.

Q Has there been any benefit during that period?

A Well, I feel that the relationship, the common relationship between the two companies, is the primary reason that I was able to obtain the coal from the Belleville or Fidelity Mine of United Electric Coal Companies.

Q Mr. Hill, based upon your knowledge and experience and based upon the following assumptions, I then want to ask you whether in your opinion there would be any potential benefit to TVA that would follow from the divestiture of United Electric from Freeman.

The two assumptions that I wish you to make are that United Electric neither owns nor controls any coal reserves in the Southern Illinois Freight Rate District or in Indiana or in West Kentucky.

The second assumption I wish you to make is that at United Electric's existing mines all but [1098] approximately 4 to 5 million tons of reserves at those mines spread among the four have already been committed under long-term contracts.

With those two assumptions in mind, again based upon your knowledge and experience, can you see any potential benefit that might accrue to TVA that would follow from the divestiture of United Electric from Freeman?

A No, I see no disadvantage to TVA under the assumptions that you have described by virtue of the separation of the two companies. I see no advantage to TVA if the two companies are separated. That's the point I'm making.

Q Could you tell me why?

A Well, this is my conclusion in that respect, that if United Electric controls no coal in West Kentucky or Southern Illinois, which are the primary sources of supply for TVA at this time and have been for years past, that the reserves that United Electric may control elsewhere are inconsequential to TVA.

Q Speaking in terms of the numbers?

A Yes.

Also, if United Electric only has about 4 million tons of additional reserves that are uncommitted [1099] to

markets, this is not a significant amount of tonnage that would influence TVA's picture very much anyway. TVA is consuming more than 30 million tons a year at this stage.

Q In your opinion, Mr. Hill, at the time you left TVA would you describe the competition among your coal suppliers?

A At the time I left TVA competition was very strong.

MR. HEDLUND: I am sorry. I have one final question.

BY MR. HEDLUND:

Q During the last five or six years of your being with TVA, could you tell me what coal buying practices were followed with respect to long-term contracts or the so-called spot purchases?

A Well, the bulk of TVA's supply during the latter years I was with TVA was coming under long-term contracts. The spot supply was diminishing. This was brought about by the change in markets in part. Spot coal in the 50's was available in large quantities, primarily because of the production of resultant sizes from the mining or preparing of coal for more premium markets, domestic markets, we will say primarily.

Carbon, ordering sizes, screening, [1100] three-quarter's, inch and a quarter by zero, were available in large amounts and could be obtained on short-term purchases.

[1101] But, as the markets changed, as the domestic market dried up or diminished to a very low level, more and more of the full mine product had to be disposed of on the utility market, and to obtain assurance of supply, we went more to longer term contracts. The industry demanded longer term, coal industry demanded longer term contracts because of the capital investment involved in supplying a single product to a customer.

But, it was advantageous to TVA to have a longer term contract because it provided assurance of supply for operation of a tremendously and costly investment, which a coal-fired plant or steam electric plant involves.

Q Typically in those years, how long were these long term contracts? What was the duration of them?

A Most of the long term contracts that we made were in the order of 10 years. We did make a few that were as long as 15 years. The longest term contract that was made while I was with TVA was a 17-year contract for a mine-mouth plant.

MR. HEDLUND: Thank you, Mr. Hill. I have no further questions.

THE COURT: Are you ready to proceed, or would you like a short recess?

* * * *

[1103] CROSS EXAMINATION

* * * *

Q Who are you selling this coal to?

A It's primarily utility coal, going to Georgia Power Company, one of the utilities in the Carolinas, and some goes to TVA.

Q Are you making a profit for these companies?

A Yes.

Q Approximately what percentage of TVA's coal purchases when you were with TVA were bought under contracts of three years or longer?

A Well, at the time I left TVA, contracts of three years or longer were providing about 80 percent or more of the total supply.

Q Approximately what percent were under contract from six months to three years?

A 10 to 15 percent.

Q What percentage on the spot market?

A The balance, up to about 5 percent, was on the spot basis.

Q Why did you not purchase all your coal under long term contracts?

A Well, we didn't feel it was desirable to buy it all on long term contracts because of fluctuations in market for power generation. The shorter term contracts and spot purchases provided the opportunity to cut [1104] back on supply or buy more. We provided our base supply through the long term contracts, and the balance was used for the peaks and valleys of supply.

Q Your long term contracts did not provide that you could order more coal if you needed more or cut back some?

A They did provide, most of them provided, that we could cut back some, but as I recall none of them provided for us to increase the supply.

Q Did you find that you could purchase coal any cheaper buying on the spot market?

A Spot purchases generally were lower priced than were the longer term purchases.

Q Did you have any provisions in your long term contracts that would require the coal producer to give you a lower price if the price of coal in the area dropped?

A No. It would not require any supplier to reduce his price just because the price dropped in the area.

* * *

[1106] Q Well, my question is, do you think TVA need not be concerned about the competitive situation among coal suppliers beyond southern Illinois and west Kentucky?

A Well, TVA is concerned about the competitive situation of coal suppliers in Tennessee, east Kentucky, Virginia, and so forth.

Q What about central Illinois?

A Well, since TVA has not bought coal from that area, I don't think it would have a primary interest in the competitiveness of that particular area.

Q Well, you did state on direct that this unusual situation, with this unusual situation, it went up to central Illinois to purchase some coal?

A That is correct.

Q In situations like this, does it benefit TVA to have a competitive situation in an area of this sort?

A In today's market or the market when I was with TVA, most coal is committed under some kind of contract at all times.

The situation that I described in connection with the No. 10 mine purchase I think is generally typical. There is no surplus of coal on short notice to my knowledge in any field.

Q Is it your opinion, Mr. Hill, at the present [1107] time that there is a shortage of coal in the TVA service area?

A Yes, I think there is a shortage of coal in the TVA supply area at this time.

Q Is it your opinion, Mr. Hill, that the coal companies have not responded adequately with sufficient supplies to meet demand and keep prices stable in this area?

A No, it is not my opinion that the coal companies have not responded properly. I think in my judgment that the developments with respect to the nuclear program in 1966, 1967, 1968, tended to discourage the coal industry from expansions in new mines, and that this lack of expansion which was due to concern about the future of the utility market for the coal industry—in my judgment, this is the primary reason at this stage for the shortage of coal supply.

Q Well, it was a fact then, though, that the coal producers did not produce adequate coal supplies to keep the prices stable. Is this not true?

A The coal industry does not have a surplus of production, that is correct.

Q The prices have been going up in the last two years, have they not?

[1108] A The prices have increased, yes.

Q When I talked to you on the phone, I think about a week ago, Mr. Hill, I think you said it was your personal opinion that one of the reasons for the reluctance of the Belleville mines to supply TVA's station was the fact that it had a better market in the St. Louis area. Is this not true?

A This is my opinion, yes.

Q If the St. Louis market contracts somewhat for coal suppliers in Belleville because of their pollution restrictions, isn't it likely that the Belleville district producers would begin bidding for TVA's coal contracts?

A I don't know because I don't know what is going to happen to TVA insofar as the pollution matters.

Q Mr. Hill, are you aware of any underground coal reserves owned by UEC in the Belleville district?

A No.

MR. HEDLUND: I am sorry, your Honor. May I have the question read back?

THE COURT: Would you read the question, please.

Q (Read by the Reporter.)

[1109] BY MR. SIMS:

Q Mr. Hill, do you have any way of knowing if UEC would have developed underground coal reserves in the Belleville district, assuming they have them, had they not been merged with Freeman?

A I have no way of knowing, no, what UEC might have done in that connection.

Q Do you have any way of knowing whether UEC would have offered these reserves to TVA?

A No.

Q You stated that UEC and Freeman coal was being shipped to TVA's Shawnee plant under a Freeman contract on direct.

A Yes.

Q Is both UEC and Freeman coal, or was both UEC and Freeman coal being burned in the same TVA boilers when this coal was shipped during the time you were with TVA?

A Yes. All that coal went to TVA's Shawnee steam plant.

Q Was there some difference in the quality between the UEC and the Freeman coal that you can recall?

A Yes, there was.

Q Were these differences simply translated [1110] into price?

A Yes. TVA's coal buying was based on the delivered heat cost of the fuel at the consuming plant. When Mr. Gebhart asked me to authorize the delivery of some of the Fidelity coal on the Freeman contract, he gave me quality information on the Fidelity coal. The quality was fully acceptable under TVA's specifications, but it was somewhat inferior to the coal that was supposed to be supplied by Freeman.

There was a price adjustment to bring the destination heat cost back to the same level. That adjustment as I recall was in the order of about 20 cents a ton.

Q When you were with TVA, there were a number of mines supplying the Shawnee plant, were there not?

A Yes, that is true.

Q Coals burned from these mines varied somewhat in quality, did they not?

A That is true.

Q In each case, you would simply translate the differences in the quality between the coal into delivered BTU price?

A That is the basis on which offers were evaluated in comparing bids for the Shawnee plant supply.

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[1113] Q Well, then, are you really in a position to say how competitive these coal companies were?

A I know that there was adequate coal supply offered each time that I went into the market to buy coal for the TVA plants.

Q This is the basis on which you conclude that it is a competitive situation?

A Well, I have general knowledge, or I had general knowledge, as to what it costs to mine coal. This was brought about by—

In fact, we had a staff of engineers. Each time we evaluated offers for supply to any of TVA's facilities, the reserves were checked, the equipment to be employed in supplying the coal was evaluated. With the engineering knowledge and know-how as to mining, it could be reasonably determined what the cost for production would be.

Q But the coal companies don't turn over to you their cost figures, do they?

A No, not normally.

Q You said you were mainly concerned with the supply of coal available to TVA, is this not true?

A When I was with TVA, I was interested in the available supply to our various plants. I was interested [1114] in the cost of that supply to TVA's plants.

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[1124] Q Is there any reason for an electric utility to have a mix in the size of the generating units that it has in operation within its system?

A Yes, there is a reason for having different size units.

[1125] Q Would you want all large size units in your system?

A No. It depends on the size of the system, however, because these units, regardless of whether they are coal-fired or may be nuclear units, they are not infallible; you do have failures.

If you have a large unit and it fails or its out of service for a period of time, it affects generation considerably more so than if it were a small unit.

MR. CUSACK: Your Honor, may I confer with Mr. Sims?

THE COURT: You may.

MR. CUSACK: Perhaps we can shorten this up a little.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: Thank you very much, your Honor.

THE COURT: All right. You may proceed.

BY MR. SIMS:

Q Mr. Hill, in your opinion, is TVA heavily committed to burning coal in the future?

A Yes, they are.

Q In your opinion, is TVA very concerned about the competitive conditions among coal suppliers?

A I would think that they are concerned, yes.

[1126] Q To the best of your recollection, what did they relate to you in these conversations concerning the affiliation between UEC and Freeman?

[1127] A Well, I was told by both the Freeman and the United Electric officials that Freeman or Material Service was acquiring stock in the United Electric Companies. I recognized that United Electric's reserves in the west Kentucky field where they had been separated

from or been a competitor, I will say, in our market, were being depleted. So, therefore, I had no concern about the affiliation because it appeared to me that there was no change in competitiveness of the companies for TVA's coal supply.

Q Do you know what coal UEC would have made available to TVA, say, subsequent to 1960 but for its affiliation with Freeman?

A No, I do not.

Q Defendants asked you, I think, before to make an assumption that UEC had no coal reserves in southern Illinois, Indiana or west Kentucky.

Is it your opinion that coal reserves of UEC in the Belleville district, which is right next to southern Illinois, would never become a competitive force in TVA's fuel requirements?

A All I can look to is the history. It was not a competitive force. I would have to assume that the history is the best guide that I have.

* * *

[1131] Q If they had acquired coal in west Kentucky, also would they not have been a competitive force?

A The answer is the same.

Q Would it be the same if they had acquired coal in southern Indiana?

A No, the answer would not be the same on Indiana, because Indiana had never been a force in competition for TVA's coal supply.

Q Assume that because of the foregoing absence of competition between UEC and Freeman due to the association, UEC did not acquire reserves which it could sell to TVA. Would that not necessarily have had an anti-competitive effect on TVA?

MR. HEDLUND: I am sorry, your Honor. May I have the question, please.

THE COURT: Read the question.

(The question was read by the reporter.)

MR. HEDLUND: I am going to object to this hypothetical. There is no evidence in the record to support the assumption that Mr. Sims has asked the witness to make.

THE COURT: Where in the record is there anything [1132] to support this assumption?

MR. CUSACK: May I answer that?

THE COURT: No, he is conducting the examination. Either he knows or he does not.

MR. SIMS: There has been testimony, your Honor, that large sums of money were built up under UEC's current assets. I think we can argue and will argue that had not this money been built up within UEC's accounts that they would have, in fact, gone out and purchased, been more aggressive in purchasing, reserves in other sections of the country.

THE COURT: I do not know how we can assume that. The objection is sustained.

[1133] BY MR. SIMS:

Q Mr. Hill, didn't Thomas Tarzy, vice president in charge of sales of UEC, talk to you about selling TVA coal from the Fidelity Mine of UEC before UEC started selling coal to TVA under the Freeman contract?

A I had even tried to encourage Mr. Tarzy to sell me some coal from the Fidelity Field or Fidelity Mine because as I stated earlier I was seeking to obtain additional coal from Illinois to satisfy the total requirements of the Shawnee Plant. Unfortunately, I had not been successful in obtaining an offering of that coal prior to the arrangements made through the Freeman Company.

Q TVA did receive some coal from Truax-Traer's Burning Star Mine in the Belleville District at one time, did they not, Mr. Hill?

A Yes. As I recall, in the mid-50's or thereabouts some coal was bought from the Burning Star Mine of Truax-Traer, but it was resultant sizes, was bought primarily on a spot basis and at a very low cost.

Q Do you expect TVA's purchasing of coal to increase in the next five years?

A I would think so, yes.

Q What about in the next ten years?

[1134] A I think so.

Q TVA is not concerned about air pollution restrictions?

A I'm sure they are.

Q But, you do not think this will affect the amount of coal TVA burns in the future?

A I think it can affect the amount TVA burns in the future, yes, but I do feel that TVA will consume more and more coal during the next ten years.

MR. SIMS: May I have just a moment, your Honor?

THE COURT: You may.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: Thank you, your Honor.

MR. SIMS: I have just two more questions, your Honor.

THE COURT: All right.

BY MR. SIMS:

Q Mr. Hill, approximately how much coal did TVA consume in 1950?

A In 1950?

Q Yes.

A Slightly less than a half million tons, as I [1135] recall.

Q Approximately how much did they consume in 1960?

A About 20 million, I would think.

Q In 1966?

A About 26 million.

Q What would you estimate TVA would consume in 1970?

A In 1970?

Q Yes, sir.

A About 33 million.

Q Would TVA have built a fossil plant rather than a nuclear plant if they had known that the Brown's Ferry unit would have been delayed as much as 12 months in your opinion?

MR. HEDLUND: May I have that question back, please?

THE COURT: Read the question.

Q (Read by the Reporter.)

BY THE WITNESS:

A You mean built a fossil plant in lieu of the nuclear plant?

Q Yes, sir.

A I think they would have built a fossil plant, but I think they would also have built the nuclear plant.

[1150]

AFTERNOON SESSION

2:00 P.M.

* * * *

RICHARD DROLLINGER,

called as a witness by the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAUBOLD:

Q Sir, would you please state your name and present home address.

A Yes. My name is Richard Drollinger. I reside at 18270 Lamplighter Lane, Brookfield, Wisconsin.

THE COURT: Will you spell your last name?

THE WITNESS: Yes, sir. D-r-o-l-l-i-n-g-e-r.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

BY MR. HAUBOLD:

Q Mr. Drollinger, are you appearing here today pursuant to subpoena?

A Yes, I am.

Q Who is your present employer and what position do you hold?

A I'm presently employed by Harnischfeger Corporation, Milwaukee, Wisconsin. I am director of [1151] engineering for the construction mining division for that company.

Q Mr. Drollinger, would you briefly describe your educational background?

A Yes. I graduated from Ohio Northern University, Ada, Ohio, in 1949 with a Bachelor of Science degree in mechanical engineering.

Q How long have you held your present position, Mr. Drollinger?

A Since June of 1968.

Q Prior to June of 1968, by whom were you employed?

A I was employed by Marion Power Shovel Company, Marion, Ohio.

Q Is Marion Power Shovel Company engaged in the manufacture of large stripping equipment utilized in coal mining operations in the Midwest?

A Yes, sir.

Q How many such companies are engaged in the manufacture of such equipment?

A There are only two companies, Mr. Haubold. Marion Power Shovel Company and Bucyrus-Erie at South Milwaukee.

Q Mr. Drollinger, do you know what the present dollar value of large stripping machinery currently [1152] employed in the Midwest is in terms of a comparison between Marion and Bucyrus-Erie?

A Would you rephrase that, Mr. Haubold, please, so that I can understand the question?

THE COURT: Will you read the question?

Q (Read by the Reporter.)

BY THE WITNESS:

A Yes. Marion and Bucyrus-Erie share equally in the market for large stripping excavators.

BY MR. HAUBOLD:

Q Mr. Drollinger, would you please state the positions that you held with Marion, and for each position could you briefly describe what your duties were?

A Yes, sir. I started as an engineering trainee with Marion Power Shovel after graduating from college, moved into manager of design for the intermediate machines. These are machines of two crawlers, mounted on two crawlers, excavators and draglines. I had the responsibility for the design of those particular machines for some period of time. I then moved into the position of manager of design for large stripping machines. This is both walking draglines and stripping shovels. I was then appointed manager of engineering, had the [1153] responsibility for the entire 140-man engineering department, and then was finally appointed, prior to my departure from Marion, as vice president of engineering with the same responsibilities as manager of engineering. [1154] Q Mr. Drollinger, when did you become Manager of Machinery Design at Marion, approximately, if you recall?

A Well, I left in mid-'68. About 1964, mid-1964, I had the responsibility for Manager of Design.

Q Now, Mr. Drollinger, during the period that you were Manager of Machinery Design and Vice President of Engineering, would you describe the frequency and nature of the contacts that you had at Marion with various coal mining companies engaged in strip mining in mid-western coal fields.

A Because of the specialized nature of the business, it was necessary that the engineering representative be present at all discussions pertaining to new machine proposals, machine modifications and this type of thing. So, I had intimate contact during that period of time with all of the major coal concerns where these discussions came into being.

Q Could you describe how frequently these discussions took place?

A Well, you understand, of course, that Marion was not successful in getting all of the business, but this was a general practice that when a coal company had in mind the purchase of new equipment, they contacted [1155] both Marion and Bucyrus. So, I would say that perhaps in that period of time there were some, a minimum of 50 discussions of that nature.

Q Mr. Drollinger, are you currently familiar with the present state of technology in the design and construction of large stripping equipment?

A Yes, I am.

Q Have you kept abreast of any developments which may have arisen since you left Marion in June of 1968?

A Yes, I've followed very closely the operation of both the Marion machines and the new large Bucyrus machines. I've made numerous field trips, I've continued my association with the coal miners through these associations, these trips.

Q Mr. Drollinger, during the period of time at Marion, while you were Vice President of Engineering and head of Machinery Design, was it a part of your duties to be familiar with the limitations of large strip mining equipment in terms of economic feasibility?

A Yes, it was.

Q Can you describe the extent of your familiarity with the limitations of stripping equipment in terms of economical feasibility?

[1156] A Well, it was—normally these proposals went this way: the customer would have some production requirements that he needed to fulfill. He also had some idea through test drillings and that type of thing to know what the stripping operation would consist of. So, it was necessary that he contact the appropriate people. This job initially fell on Engineering to make the first proposal, and it was in this way that we participated in all of these discussions.

Q Now, Mr. Drollinger, could you name some of the coal mining companies with whom you personally worked in evaluating the suitability of strip mining machinery for particular coal mining sites?

A Yes. Some of the names that I recall, Peabody Coal Company, Ayshire Collieries, Southwestern Illinois Coal Company, Truax-Traer. These are the types of companies that I dealt with.

[1157] Q Now, Mr. Drollinger, in general terms can you describe the functions that a stripping machine must perform in strip mining coal?

A Yes. It's the function of this stripping machine to remove the material that overlies the coal, deposit it far enough away from the excavations so that the coal can be taken out. The material that's taken off the top of the coal is called overburden, and this is the term that's applied—that's the material overlying the coal.

Q If I understand you correctly, overburden is expressed in the number of feet or a particular depth, is that correct?

A That's correct.

Q Is the term "overburden ratio" also used in the strip mining business?

A Yes, sir, it is. It's a term that's vital in the sizing of a machine. Overburden ratio is the ratio of the number of cubic yards of material that must be moved to get at a ton of coal. There is a general rule of thumb that says that the overburden ratio—perhaps I best illustrate.

If the overburden depth is 80 feet and the coal seam is 4 feet in thickness, the overburden [1158] ratio in this rule of thumb approach would be 80 divided by 4, or 20 to 1. This term is used extensively in strip operations.

Q Mr. Drollinger, do you know what the largest strip machine currently operating in Illinois is?

A Yes, it's the Marion-type 6360, in operation at the Captain Mine, Southwestern Illinois Coal Company.

Q Do you know what the extent of overburden being removed by this machine at this site is?

A That machine is operating in overburden of about 80 feet in depth.

Q Now, Mr. Drollinger, what role did you personally have in the design and development of this Marion 6360 machine?

A The Marion 6360 was developed during the period of time when I had the responsibility for the engineering department. Now, I'm sure you understand that this was not a one-man operation, and I had control and the responsibility for the department. I didn't personally put all the lines on the paper.

Q So that we can understand a little bit of the dimensions of the Marion 6360, can you give us some of the

vital statistics on this machine in terms of height, weight, bucket size and so forth.

[1159] A Yes, sir. Mr. Haubold, this is a difficult piece of equipment to describe. I'm sure that when you hear the word "excavator", many people automatically think of the machines that they see parked alongside the highway, but this is a far cry from this type of machine.

The Marion 6360 had a working weight of 28 million pounds. It had a 180 cubic yard bucket. Now, these dimensions in themselves are not meaningful, but we made some comparisons at one time to illustrate the size of the machine. We found that the 180 cubic yard dipper was sufficiently large to hold 15 Volkswagens. The machine has the capability of lifting a half a million pounds, swinging that half a million pounds about a tenth of a mile away, and depositing that half a million pounds on the top of a 15-story building. So, you see, it's not the type of machine that you see digging basements and in areas like that.

[1160] Q Is this machine, Mr. Drollinger, designed for stationary use or does the machine move?

A The machine is mounted on eight crawlers of the type similar to those that you might find on a bulldozer, and again it's only the type of mechanism that we're talking about. These are tracts. But, again, to give you an idea of the tract size, there are about 340 such crawler shoes making up these eight belts. I guess 342, to be exact, and each one of these crawler shoes weighs as much as two average automobiles.

So, you can see that we're talking like 700 automobiles in weight alone, just to make up the crawler shoes.

Q What is the height of the machine, Mr. Drollinger?

A Well, the machine over the boom point is probably in the neighborhood of 180 feet. As I said, it can deposit this half million pound load on the top of a 15-story building, so the boom point is higher, of course, than the load, about 180 feet.

Q Mr. Drollinger, what did this machine cost the coal company to purchase from Marion?

A Well, that's a difficult question to answer, Mr. Haubold, because there are a number of things that [1161] must be considered in the cost.

First of all, there's the original purchase price, and this is a machine that costs the customer FOB Marion about \$16 million. But there are other costs involved, costs that have a definite bearing on the machine cost ready to operate.

Q Could you describe these additional items of cost from the customer's standpoint?

A Yes. It's the customer's responsibility to pay shipping costs for a machine of this size, and again to give you some concept of the size, it required 350 rail cars, standard rail cars, to ship the machine, so the freight bill alone was rather large.

Then it's also the customer's responsibility to assemble the machine on the digging site. This requires about 300,000 erection hours. These are hours spent in the field after the machine arrives, at a cost of \$6.00 an hour, which is a reasonable number for field labor of this kind. You can see that there's approaching another \$2 million in cost in erection fees alone.

[1162] Q Mr. Drollinger, from the standpoint of economic feasibility, do you have an opinion as to what the maximum capabilities of the Marion 6360 machine is in terms of maximum overburden removal?

A That machine was designed to operate in overburdens not to exceed as a general practice 100 feet.

Q From the standpoint of economic feasibility, Mr. Drollinger, how is the depth of stripping operations related to machinery size?

I guess what I am really asking at this point is, why do you need a machine of such enormous size and cost to handle 80 feet of overburden?

A Well, it is necessary when you are handling overburdens of this depth to remove the material as quickly and as efficiently as possible.

I am sure, again, you understand that, to be completely ridiculous, if you would want, it would be possible to remove this type of overburden with a teaspoon, but this is not a practical approach from an economic standpoint. So, the concept is to have a big machine of this capacity moving the overburden. This is this only way it is economically practical.

Q Mr. Drollinger, you stated that the Southwestern Illinois Coal Company site which utilizes the Marion 6360 re- [1163] moves approximately 80 feet of overburden.

Are you aware of what overburden requirements the Marion machine was required to meet at this site in order to be economically feasible?

A Yes. This was one of the original design considerations for the machine. Southwestern Illinois Coal had commitments for enough coal to fill a 180-car train on a daily basis.

Then, knowing the material that had to be removed to obtain that kind of coal production, the Marion 6360 was developed and sized accordingly.

Q Do you know in terms of cubic yard removal what the overburden removal as contrasted with the coal production figures was required at this site?

A The machine was developed with the capability of handling about 5 million cubic yards a month.

I would say, again, as a good comparison, this is like 50,000 standard hopper cars, to give you some idea of the production.

Q Mr. Drollinger, has Marion ever made an attempt to determine the per hour cost of operating the Marion 6360?

A As part of our initial study—as part of Marion Power Shovel's initial study, we tried to establish [1164] what the operating cost of a machine of that size might be or what the down time would actually cost. We estimated that that down time would run in the order of magnitude of \$3,000 an hour. This number was confirmed, by discussions with mine management after they had the machine in operation.

Q In determining these costs, Mr. Drollinger, what assumptions were made in terms of the machine's operating life?

A It is general practice for a machine of this size to be operated on a year-round basis, three shifts a day. It is generally assumed that the machine would operate for no less than 25 years. That is pretty much determined to be the minimum period of operating life for these machines.

[1165] Q In terms of the assumptions relating to the machine's operating life, on a daily basis, what type of

operation were you considering here? Was it a virtual 24-hour operation? You mentioned three shifts.

A Yes. It is a three-shift operation virtually, as much as practical, 24 hours a day.

Again, to give you some idea of the necessity of keeping this machine in operation, it is standard practice for the coal companies to allow the oiler—this is a two-man operation generally, an operator and an oiler. In order to keep the machines in operation during the period of time that the operator is eating his lunch, the oiler is given the opportunity and the requirement to operate the machine and keep it digging. That is the whole requirement.

Q Mr. Drollinger, in the context of the Southwestern Illinois project involving this 80 feet of overburden removal, I would like to get some idea as to how difficult a task it was to design this Model 6360.

Can you describe any major difficulties you encountered in the design of this machine, if any?

A Yes. There were many, many problems involved. The sheer size of the unit alone brought on many problems, many that we had not planned on initially.

[1166] We talked before about the crawler shoes; the problem in getting a million and a half pounds of good sound castings is a real problem in itself.

To give you some idea of the engineering time involved in the development of a machine of this size, Marion spent about 80,000 engineering hours alone in the development of this machine. This is like 40 man-years for one man to work up the machine.

Q How important a consideration was reliability in designing this 6360 machine?

A Without question—

MR. EISEN: We would stipulate that reliability was important, your Honor.

MR. HAUBOLD: I would prefer that the witness answer the question and describe the context in which reliability played a role.

THE COURT: Go ahead.

BY THE WITNESS:

A Reliability was the number one item of consideration in the development of these machines. As I say, this

is not an excavator. It is for all practical purposes a digging factory. When it is not in operation, the man's factory is down. It is vital that the machine stay in operation.

[1167] BY MR. HAUBOLD:

Q Were there any problems encountered in terms of this particular machine's operations in the context of the pit operations which caused you special difficulty when the overburden approached or exceeded 80 feet?

A Well, there were a number of problems that had to be considered as a part of the initial design. Some of the problems—some of the considerations we had fortunately did not turn out to be problems, but there is difficulty in the operation of a machine of this size in knowing whether or not the sheer weight alone would destroy the pit.

This is difficult to describe. Perhaps the best comparison I could make would be to consider a billiard ball or something of this nature sitting on a wet napkin.

We had concern—no one had ever put a 28 million pound machine on a coal seam before. No one knew whether or not the coal seam would sustain that kind of a weight. The gambles involved and this kind of thing, I am sure you can appreciate, were rather large.

If the coal seam would not hold the weight, if the material below the coal seam would not give firm [1168] enough footing, it is conceivable that the unit would have gone through the coal and, for all practical purposes, the \$16 million investment, the initial cost, would have been lost because the machine can't operate that way. It is necessary that it operate on the coal.

[1169] Q Mr. Drollinger, in the event that an unforeseen technical problem might have arisen involving the inapplicability of this machine to the given site who bears the risk of this cost in terms of industry custom and practice?

A It has been industry custom or practice in the past that the vendor, the machine vendor bear the cost of any field failures, any field fixes that are necessary.

I am told that Marion Power Shovel is now available for sale at some number like \$22 million. This is im-

portant only in saying that the Marion 6360 for all practical purposes represents the net worth of the company. An error in judgment for all practical purposes could bankrupt the company.

Q Mr. Drollinger, are there any problems which become more accentuated in terms of difficulty and expense when overburdens increase concerning removal of the overburden or the material under the surface?

A Well, the purpose of the machine as we talked is to remove the overburden and deposit it in such a manner that it doesn't come back into the excavation. As the overburden increases in depth, the problems involved in depositing this material far enough away to keep it from coming back into the pit, into the [1170] excavation, presents more and more of a problem.

I do know of instances where the spoil pile, the overburden deposited off to the side, has come back into the pit and has in some instances caused fatalities by crushing the operator as he was caught in the cab of these machines. So, this is a real problem.

Another problem that any excavation faces is that possibility of operating below the water table where they might flood the excavation and it might make pumping necessary if pumps will do the job. This only increases the cost. So, there are a number of considerations involved.

Q Mr. Drollinger, based on your experience and knowledge, do you have an opinion whether there are any practical limits on the maximum overburdens and overburden ratios likely to be achieved in the Midwest coal field within the next five to ten years?

A Based on my experience and the intimate customer contact that I have had, I would say that probably we are facing the limitations of about 100 foot in overburden depth, and at the outside, the maximum overburden ratio of 25 to 1.

Q Mr. Drollinger, is it possible by simply [1171] increasing machinery size to design and operate a stripping machine in the Midwest which is capable of stripping in excess of 100 feet of overburden?

A I think perhaps, Mr. Haubold, that it is possible to build, to design and put the lines on paper of a machine

that will dig in excess of 100 feet in depth. The method of fabrication of a machine of this size, the problems involved in operation, I don't know. There are many unknowns still involved.

Q Well, in your judgment, would it be economically feasible to build and operate such a machine in the Midwest?

A I can't believe that it would be economically feasible.

I have indicated the numbers of problems involved in the design and fabrication of a machine of this size. There are companies besides the vendors of the equipment that also get involved in the fabrication of a machine of this size.

For example, one of the electrical vendors had to design and build an electric motor specifically for the Marion 6360, an electric motor larger in size of that particular type than they had ever built before.

[1172] I also know that for successful operation of the large Bucyrus walking drag line, it was necessary for a rope vendor to spend approximately \$1 million to develop a machine capable of manufacturing the five-inch diameter rope that that machine required.

My point is that the participation of not only the company doing the initial design, but all of the associated companies, has a bearing on whether or not a larger machine could be built.

Q If the decision were made today that a larger machine would be built or, at least, it would be attempted, do you have any opinion as to how long it would be until such a machine could conceivably be operating in the field?

A Well, that is a difficult question to answer. The Marion 6360—and I guess that is the only way I can answer it—the Marion 6360, the 180-cubic yard machine, required some three years from the time the initial discussions started until the machine was ready to go into operation. Without knowing what problems might be involved and without considering any unknowns at this time, I would presume that perhaps as long as five years would be required before a machine larger than the 6360 could be developed and put into operation.

[1173] Q Do you have any kind of rough estimate as to what this machine might entail in terms of consumer cost if it could be technically built?

A It is safe to assume that the Marion 6360, ready to dig, costs in the order of \$20 million. It is conceivable to me that a machine perhaps half again as large as the 6360 might run double the cost, perhaps as much as \$40 million.

Q So that I understand you, you do not believe that this is as feasible possibility at this time from an economic standpoint?

A No, sir.

Q Are these large machines that we have been talking about such as the Marion 6360 readily transferable from one coal mining site to another?

A Mr. Haubold, these machines are designed to operate in a particular pit. The overburden ratio, the type of pit, the coal—all of these have a bearing on the machine design.

If you will recall, we also said some 300,000 hours erection time was required to put them together initially. So, it is plain to see that to tear a machine down—the machines are actually fabricated in the field much the same as a ship is built on the waves.

[1174] Both Marion and Bucyrus follow the practice of taking to the field regular machining equipment, milling equipment and this type of thing. The machine is too large to bring into a machine shop. I am sure you appreciate that.

So, because of all of these limitations, it is not practical to assume that a machine like that could be torn down, shipped and reassembled in another area.

[1175] Q Mr. Drollinger, in your discussions with coal mining companies concerning the economic feasibility of utilizing your Marion machines for various coal mining sites, has the subject of reclamation requirements or laws ever been considered?

A Yes. Reclamation, of course, is becoming more and more of a consideration for mining companies. It is a definite cost in stripping that must be considered. The higher the overburden—I am sure you appreciate

that the larger the machine and the higher the overburden, the more difficult it is to level out the spoil piles that are deposited from the excavation. The more difficult it is, of course, then the more cost is involved.

I know that coal companies have been searching for equipment large enough to allow them to perform this reclamation at some reasonable cost. The present equipment with the large machines is not practical from a cost standpoint.

Q Mr. Drollinger, did you have the opportunity to examine Table 5(a) in the report prepared by the Paul Weir Company in this case?

MR. HAUBOLD: A copy of this report, your Honor, has been received in evidence as Exhibit 87.

[1176] MR. EISEN: Is that a defendants' exhibit or a Government's exhibit?

MR. HAUBOLD: It is defendants' exhibit.

BY THE WITNESS:

A Yes, sir, Mr. Haubold, I have examined this Table 5(a).

BY MR. HAUBOLD:

Q This table purports to reflect the initial investment per ton required to strip mine coal at various overburden ratios.

Now directing your attention to the data on the cost of stripping equipment, are the figures set forth accurate?

A Looking at the column for overburden ratio, 25.2 to 1, Mr. Haubold, I see that the stripping shovel capital costs are estimated to be \$15 million.

As I have indicated, I would expect that the ready-to-operate cost of that machine is in the order of \$20 million. So, these figures are conservative.

The initial investment, this \$11.75 investment per annual ton, I would think should be higher than it is shown here.

MR. HAUBOLD: I have no further questions, your Honor.

* * * *

[1219]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

Before the HON. EDWIN A. ROBSON, Judge

Thursday, April 9, 1970

10:40 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,

appeared for Plaintiff;

MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III,

appeared for Defendants.

ALSO PRESENT:

MR. JAMES M. FOLSOM and
DR. PETER STEINER.

* * * *

[1232]

GEORGE GAMBLE,

called as a witness by the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEDLUND:

Q Would you please state your name, address and occupation.

BY THE WITNESS:

A George Gamble.

THE COURT: Spell your last name, please.

THE WITNESS: G-a-m-b-l-e.

BY THE WITNESS:

A (Continuing.) My address is 1821 Viking Way, La Jolla, California. I am a self-employed consultant, working primarily for Gulf General Atomic in La Jolla.

BY MR. HEDLUND:

[1233] Q Mr. Gamble, would you please briefly describe your educational and business background.

A I graduated from the University of Virginia in 1922 with an E. E. degree, electrical engineering.

I went to work for the General Electric Company in Schenectady, New York, on their test course, and later worked in the field and office for them for about two years.

I then went with the Stone & Webster Engineering Corporation of Boston, and worked in the field and also in the office for them for a total of 7½ years.

My last job was that of resident electrical engineer on the Osage Hydroelectric Project in the State of Missouri which was being built by Stone & Webster for the Union Electric Company of St. Louis.

At the completion of that job, construction work was at a very low ebb, indeed. I was offered a position by the owning company, Union Electric. I had the presence of mind to take the job and stay there the rest of my working life.

When I went with Union Electric, I started as a, I presume, a junior engineer with no particular title. Over the course of the next 34 years, I became [1234] Superintendent of Power Production and Vice President of Power Production and Vice President of Production and Distribution and Operating Vice President and Executive Vice President.

[1235] Q Was executive vice president your title upon your retirement from Union Electric?

A Yes. That was on October 1, 1966.

THE COURT: After that, you went to a sunny climate?

THE WITNESS: I went to a good climate, yes. Not St. Louis. St. Louis was not good. I will take up St. Louis, too.

THE COURT: In the summer?

THE WITNESS: Yes, sir.

BY MR. HEDLUND:

Q Mr. Gamble, at any time were you a member of the board of directors of Union Electric Company?

A Yes. I was elected in April of 1962 as a director, and I am still a director.

Q You are still a director?

A Yes.

Q Would you tell me, Mr. Gamble, what responsibilities you had in the last six years of your employment by Union Electric, what responsibilities you had with respect to the coal buying by that utility?

A Well, the last six years, that was after we had divested ourselves of any coal mining properties. I simply had broad supervision over the Purchasing Department where we had, you might say, a very highly [1236] qualified expert who was actually the coal buyer. I didn't do any coal buying as such myself, but he did the buying and he was responsible to me. He was one of, oh, roughly six or seven departments that reported to me.

Q Could you tell us the name of the man to whom you were just referring?

A Mr. Mark Covell.

Q Could you spell that, please?

A C-o-v-e-l-l.

Q Did anyone succeed Mr. Covell in his function?

A Mr. Louis R. Tomey, T-o-m-e-y, succeeded Mr. Covell just about the time that I retired. Mr. Covell and I retired within six months of each other.

Q At the time you retired, was Mr. Tomey reporting directly to you?

A Frankly, I have forgotten whether Tomey—whether Mark retired a little ahead of me or a little after; I don't remember. But he would have reported to me had he succeeded Mr. Covell at that time.

Q You mentioned the coal mining activities of Union Electric. Could you tell me what, if any, participation or responsibilities that you had in that regard and the dates on which you had those responsibilities?

A When I became operating vice president in [1237] 1954, I took over from the preceding operating vice president, who at that time became executive vice president. I took over the running of our coal mines as part of my several departments of responsibility.

I had, more or less, administrative disposition, management of those mines. I never pretended to be a coal miner, but I was seeing that the mines were run in a way acceptable to our management.

Q Was the coal mining activity of Union Electric carried on by a subsidiary of Union Electric?

A It was under the Union Colliery Company which was a subsidiary of our company.

Q Did Union Colliery have a mine in Illinois?

A Yes.

Q What was the name of that mine or mines?

A The name is the Kathleen Mine down in DuQuoin, Illinois.

Q Would that be in the Belleville freight rate district, if you know?

In that connection, I show you what has been received in evidence as Nugent Deposition Exhibit 38, which is a map of shipping coal mines in Illinois by Jack Simon.

MR. FUTTERMAN: Mr. Hedlund, the Government will [1238] stipulate that it is in the Belleville freight rate district.

MR. HEDLUND: Thank you.

[1239] BY MR. HEDLUND:

Q Mr. Gamble, let me start this way, if I may. What became of the Union Colliery properties in Illinois in, say, 1958?

A The Union Colliery mine and reserves were sold in, I believe it was 1958.

Q To whom were these properties sold?

A A combination of Truax-Traer and United Electric Coal Company.

Q Do you recall what was sold to each of those companies?

A It was my impression at the time that it was a joint sale, but I know that they divided up. Maybe we knew that, but I wasn't really negotiating the sale. So that the coal mining reserves, especially the strip reserves, which were contiguous to the United Electric Coal properties and were part of our coal reserves, were taken over by United Electric. The mine itself and the equipment and tipple and what-have-you were taken over by Truax-Traer.

Q Do you know whether the mine continued in operation after this sale?

A I am quite sure it did not, certainly not for any length of time.

[1240] Q Could you tell me, sir, prior to this sale, who consumed the output, if you know, of the Kathleen Mine of Union Collieries?

A That was a 100 percent captive operation of our company. We burned all of the coal that came from it. We had our own railroad to deliver that coal from DuQuoin to our plants.

Q Why did Union Electric decide to dispose of the mining properties of Union Colliery?

A Well, at the time that decision was made, the coal business was becoming a very large business, indeed, in general. There were a good many strong companies in the field. The cost of strip mining and other things were beginning to bring down the cost of coal.

Frankly, we didn't feel that we could be in the best interest of ourselves and our customers by continuing

what might be a small mining operation. We thought we could do better by getting competition between professional coal mining suppliers.

Q Did you believe that you would be able to buy your coal cheaper from coal producers than to mine it yourself?

A That was our belief.

[1241] Q Did subsequent events prove you correct?

A I am very sure they did.

Q Mr. Gamble, I show you what has been received in evidence as Government Exhibit 87, which is a table entitled "Acquisitions in Eastern Interior Coal Province Since 1954."

MR. HEDLUND: Does the Government have a copy of the report?

MR. FUTTERMAN: Yes. Just a moment.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

MR. CUSACK: (Handing document to Court.)

BY MR. HEDLUND:

Q I direct your attention, Mr. Gamble, to page 2 of this chart. You will notice in the left-hand column that it is headed "Acquiring Coal Company." In that column, there is the name of Truax-Traer. It refers to an acquisition of the new Kathleen Mine of Union Colliery.

My question, sir, to your knowledge, is that the properties that we have been discussing in terms of the sale to Truax-Traer?

A I am very sure it must be.

Q You will note that that acquisition on that [1242] table is dated 1958, and there is a production figure for the last year prior to the acquisition, the tonnage of 1,157,000, I believe.

Was that approximately the production of the new Kathleen Mine in 1957?

A We called it normally a million-and-a-quarter-ton-year mine that qualifies in any one year.

[1243] Q Do you recall when the new Kathleen Mine was opened?

A 1947.

Q Mr. Gamble, I show you what has been received in evidence as Government Exhibit 53, which is a chart entitled "Production of Coal in Illinois by the Leading Companies and their Subsidiaries for the 1958 Calendar Year."

I direct your attention—

MR. HEDLUND: May I approach the bench, your Honor?

THE COURT: Yes, you may.

MR. HEDLUND: Thank you.

BY MR. HEDLUND:

Q I direct your attention to the listing of companies, and ask you if the name Union Colliery Company appears thereon?

A Yes. It is roughly the fifth from the bottom.

Q Would that be the same Union Collieries, to your knowledge, that we have been speaking of?

A Yes, I am quite sure it must be.

Q I note that on that table, there is production of 577,000 tons. You have testified this was basically a million-and-a-quarter-ton mine of annual [1244] production.

Do you know why the production of that mine decreased from 1957 to 1958?

A Well, the mine was sold in May, I think it was, of 1958. I think it was May 29th. So, we had only five months of production in that year. That would be far short of an annual production.

Q Mr. Gamble, could you explain briefly the nature of your consulting work for General Atomic and briefly how you came to become a consultant for General Atomic?

A Well, how I became that was somewhat of an accident. I called up Mr. Claire one day to ask him a question. When we got through, I said, "I hope I see you someday before long, Ty. If you want to see me before I retire, you better get by here pretty soon." He said, "My God, are you going to retire?" I said, "Yes."

So he said, "Come here and go to work for us." That was the story. It was a longer story than that, but I did go to work for them.

Q Mr. Claire was whom?

A Titus Claire, he was one of the Gulf dealers at that time at General Atomic Division of General Dynamics. He was in charge of their so-called commercial—[1245] we never used the word—sales department. That is what it amounted to. So, he got me to come out there and go to work for them primarily on account of my—well, two things: my general knowledge of the way power companies function in the field of power, and also primarily because I knew a great many people in the industry, having been reasonably active certainly within the last 20 years. So, I worked with them out there since that time.

At first, I put in a year or two of doing a fairly decent job of learning the science. I thought that my ripening years had got me past completely in the atomic field. I graduated from Union Electric without knowing a thing about atomics, but I went out there and had to start over again. I did a fair job and I do understand what it is they are doing. I don't pose as an expert, but I can keep up with a good many people on it. I have used that in my contact with utilities and have helped them make contacts and it helped make some of the presentations to the utilities.

Q Could you briefly describe the reactors under development by General Atomic?

A Yes. The first reactor is what we call the high-temperature gas-cooled reactor, which is a [1246] reactor in the thermal spectrum. It is, you might say, a competitor or similar to the water reactor as manufactured by the four other manufacturing companies in that it generates heat through the use of what we call slow neutrons, namely, in the thermal field.

[1247] I state that to differentiate it from the so-called fast reactor which I will talk about a little bit later.

Now, in the high-temperature gas-cooled reactor, Gulf General Atomic, as I will now call it because we were

bought in November of 1967, I believe it was, by Gulf Oil—that must be November of 1968 by Gulf Oil.

We did complete in the early summer of 1967 a 40,000 kilowatt—a 40 megawatt plant on the system of Philadelphia Electric Company which illustrated and used the technique of gas cooling. I might say that it did so very successfully.

In the power business these days, that is a comparatively small plant, but it did illustrate the principle.

We then moved on and are building currently, some 65 percent complete, a 330,000 kilowatt plant of the same type near Denver, Colorado, on the system of the Colorado Public Service Company. Now, that plant will use the same physics and atomic principles, but its hardware will be considerably different and more nearly like we would use in the large plants. We expect that plant to be essentially completed next year and in [1248] commercial operation the first part of 1972.

Very recently, we have submitted a proposal for an 1,100 megawatt, 1,100,000 kilowatt plant up in Oregon to the Eugene Water Board. They have also received bids from the four light water manufacturers, and those bids are currently being considered. If we are a successful bidder, that will be our first large plant.

Q Mr. Gamble, if I may interrupt, if you know, approximately—you referred to an 1,100 megawatt station in Oregon. What would a comparably-sized coal-fired plant consume in coal?

A Well, a thousand megawatt plant consumes roughly $2\frac{1}{2}$ million tons a year on about an 80 percent load factor basis. Eleven hundred would take 10 percent more than that. I would say 2,750,000 tons.

[1249] Q Can you go up the scale in direct proportion, that is, a million kilowatt station would consume 2.5 million tons of coal, and therefore a 2 million kilowatt station—

A That is a straight line law, yes.

Q (Continuing)—would consume 5 million tons of coal?

A Well, I was talking, I'm afraid, when you were asking your question, so I didn't get the 5 million as fast as you did.

Q Would a 2 million kilowatt station consume approximately 5 million tons of coal?

A That's correct, yes.

Q Is Gulf working in the development stage or otherwise on a reactor other than the high-temperature gas-cooled reactor?

A Yes. We are currently right far along, at least with all the preliminary work, on a gas-cooled fast breeder reactor, which will be the next generation of reactors after the so-called thermal reactor, and we believe we have a very effective principle, and we are hopeful of seeing that developed in due course.

Q Can you tell us briefly, without going into too much detail, say, the most significant aspect of the [1250] gas-cooled fast breeder reactor under development by General Atomic?

A The most significant feature is this, that since we have no water in our reactors at all and since we have no sodium or any other material except gas, our fast neutrons are able to stay fast and do a very thorough job of reacting with other atomic particles and consequently performing the breeding function, which means that we can produce in our fast gas-cooled reactor, we expect to produce, 155 percent as much fuel as we burn. The other reactors in the field are not able to come up with that ratio of reproduction because they have more things within them which slow down the neutrons.

Q In other words, this breeder reactor will produce approximately 1.5 times the amount of fuel that it consumes?

A It will fuel itself again and give you enough to charge half of another reactor.

Q Mr. Gamble, without asking you to be too much of a salesman, could you tell me briefly what benefits the high-temperature gas-cooled reactor that you have already built and have a proposal in, what advantages that has over the pressurized water reactors [1251] and the boiling water reactors?

A Well, there are fundamentally two. The first is that we, since we are at high temperature and high pressure, we have the same thermal efficiency as a high

pressure, high temperature fossil fuel plant, which now is the end of many years of industry experience, and, consequently, those plants now are very efficient, and by that more of their heat is converted into electricity and less of it goes into the cooling water.

[1252] Now, our atomic reactor, the high temperature gas-cooled reactor, does not reject any more heat to the river or require any more condensing or cooling water than does the fossil fuel plant. Unfortunately, in the water reactors, they are not able to go to that high temperature and high pressure, and consequently they have a lower over-all efficiency, which means that they do reject to the river at least a third, almost 50 percent, more than we reject to the river or that a fossil fuel rejects. By "rejecting", I mean that they put that much additional heat into the circulating water that is used to condense the steam after it goes through the turbine, which is just part of the steam power plant cycle. Now, that is one.

Now, the other one, which I think is really more significant, is that we do not use a large charge of uranium 238 and uranium 235 as do the water reactors. They generate plutonium. When you take—let me back-track a second.

Uranium in nature is about 99.3 percent uranium 238, and only about seven-tenth's of one percent uranium 235. Uranium 235 will fission, split, send out neutrons, whereas uranium 238 will not, and the water reactor, when the uranium 235 atom splits, some of [1253] those neutrons split other atoms, releasing heat and continuing the reaction. Others of them hit and stick, you might say, in the uranium 238 atom and make it uranium 239, and after it goes through certain of its own little stunts, it turns itself into plutonium 239, and plutonium 239 is fissionable, and that is where the breeding—there's a breeding takes place in all reactors.

Now, you do not call it a real breeder until it makes more than it consumes, but in the water reactor, they make plutonium, which is really best used in a fast reactor and not best used in a thermal reactor. It can be used there.

In our reactor, we do not use a great quantity of this uranium 238. We use enriched uranium 235 and a great quantity of thorium 232, and when one of these electrons, neutrons, hits the thorium 232, it converts it into uranium 233, picks up one, 233, which is a very fine atomic fuel, a better reactor than the uranium 235. Now, neither uranium 233 nor plutonium appear in nature. Those are man-made, and they are made in these reactors, and we have a better fuel that we can make in uranium 233, which is applicable to be used in other thermal reactors, has not got the [1254] weight for the fast breeder to come along to use up the plutonium. Now, plutonium is going to be used in thermal reactors, I'm very sure, but it is not a simple process. I hope that's not too technical.

[1255] Q So that I understand, the second significant aspect of the high-temperature gas-cooled reactor is that it is a better breeder or a more efficient breeder of additional nuclear fuel than the water reactors.

A The thermal reactor, our high-temperature reactor is what we call an advanced converter because it does make some 75 to 80 percent as much fuel as it burns, whereas a water reactor makes something less than 60. I don't know what the—

Q To sum up the first significant aspect that you mentioned of the high-temperature gas-cooled reactor, its thermal pollution, if you will, aspect is no different than the thermal pollution aspect of a similar sized fossil or coal-fired plant, is that correct?

A That's correct. The high-temperature gas is the same as the fossil.

Q Mr. Gamble, has Gulf Oil been engaged recently in a survey or study with respect to the future demand for oil by electric utilities?

A Yes. Somewhat informal, but it is being carried on.

Q Did you participate in that study?

A Yes, I did.

[1256] Q Could you tell me what the results of that study were?

A I'd rather give a little fuller outline. They came to us because—

Q I am sorry, sir. "They" being who?

A Gulf Oil came to General Atomic because we do have this commercial department, you might say, that has good contact with utilities, and of which I am a member, and it's the reason I'm here, frankly, and so I was asked to participate in that study, and we did that by calling up and contacting and visiting, in several cases, various people in the utility business in the larger companies who happen to know pretty well, and find out from them what their current thinking is about the consumption of oil.

As a matter of fact, some surveys have indicated the consumption of oil by utilities was going to be on a downgrade, a negative tangent, but at least two of these people who had participated in the survey, as a matter of fact, said that they were sorry to say the survey was out of date even before it was published, and that things had changed markedly since that time, and that they were very much interesting in getting, if they could, low sulphur residual oil to burn in large [1257] quantities, on account of the impact of the air pollution regulations on the burning of coal.

THE COURT: Would now be a good time to take a five-minute recess?

MR. HEDLUND: Fine, your Honor. Yes.

THE COURT: All right. We will recess for five minutes.

(There was a short recess, after which the following further proceedings were had herein, to-wit:)

THE CLERK: Case on trial.

THE COURT: You may proceed, Mr. Hedlund.

MR. HEDLUND: May I have the last question and the last portion of the answer read back, please.

(The record was read by the reporter.)

BY MR. HEDLUND:

Q Mr. Gamble, based upon the information obtained as a result of the survey, your participation in it, are you able to predict what the future demand for oil will be by electric utilities in this country?

A That's a pretty big order. All I can say is this, that there is going to be a great deal more demand for residual oil in the next few years than even as much as one year ago we would have anticipated. The demand [1258] may not be met, there may not be enough residual oil available for the utilities to get all they would like to have, but we do know that the air pollution restrictions on burning coal, and most of the coal is high sulphur coal, has got the utilities in a bind where they will have to burn oil until they can get some of the SO₂ devices working, and that's not on the immediate horizon. [1259] Q Would you be able to quantify, assuming that this demand is met, the amount of oil you think will be consumed by electric utilities on an annual basis?

A You have to recognize this is pretty much of a guess, but I think I know the order of magnitude.

Q If you could just give us that.

A The order of magnitude will be somewhere between 300 and 500 million barrels, let's say with a ceiling of a billion barrels.

Q Do you know offhand what the coal equivalent of a million—did you say 100 million or 1 million barrels?

A Ceiling would be a billion.

Q A billion barrels?

A A billion barrels, yes.

Q Would you be able to compute the coal equivalent of that just in an order of magnitude?

A The other day I took a look at 300 million tons of coal, which is roughly the coal consumption now, and that came out to be something under 2 billion barrels, and I also put that against the amount of oil that may be in the Alaskan oil fields, and if we would be burning 2 billion barrels of oil a year, we could burn up all the oil that is believed to be in those reserves in a [1260] matter of definitely under ten years, so it is not an infinite supply of oil.

Q Mr. Gamble, based upon your experience with Union Electric, I would like to ask you some questions about the coal purchasing policy of Union Electric and utilities in general.

With respect to the coal supply for large power plants, for new power plants to be constructed, is that supply likely to be contracted for from the output of one, two or three or more mines?

A It's apt to be contracted for from the output of one mine, although it is possible it could be two, but fundamentally one mine would be most apt to get the contract for a unit.

Q Why is that, sir?

A Well, because both the coal mining business as well as the power business these days are mass production operations, and you build a million kilowatt machine or even a 500,000 kilowatt machine, you build a very large machine, and a 500,000 kilowatt machine will take about a million two hundred fifty thousand tons of coal a year. That takes a lot of trains of coal, and consequently you have to go to a big operation to produce that kind of coal. We bring a trainload of [1261] coal into our Sioux Plant every day from a mine, I think it is roughly a hundred cars. So, it's a mass production deal and a mass consumption deal at the utility end.

So, when you are preparing to build a plant, a new plant with large units, one of the first things you have to do is to find out where you are going to get your coal and what type of coal that is going to be, so you know best how to design your equipment.

So, it has become within the last decade, certainly more intensively as about the time that I was retiring than it had ever been before, a big business, because we have to buy, and do buy, 20, 30, as many as 40 million tons of reserves at one swipe.

Q Prior to the construction of a new power plant, how far in advance does a utility typically arrange for its supply of coal?

A Oh, I'd say a couple of years, long enough so you know what you are going to do, and when you go out for your boiler bids, that you will know what you are going to buy, so at least two years before you start your plant you ought to have a pretty good line on your coal.

Q Let me rephrase the question, because I think you may have misunderstood me.

[1262] What I am trying to get at is, prior to the construction of the power plant itself, how many years' supply of coal is normally contracted for before that plant becomes operable.

A I would say that you would not want to contract for less than a 15-year supply. Many times it's done for ten, but 15 years—and frequently those contracts will carry an option by the purchaser to renew for a period of 15 years. So, you could potentially have a 30-year supply, which incidentally would represent about twice as much value in coal as the whole power plant costs.

[1263] Q In negotiating for new coal contracts, what does a utility normally require with respect to the reliability of the coal supplier and the reserves available to that supplier?

A Well, as I said you're in big business, and you have great responsibilities of keeping that power plant running and turning out electricity to supply your customers, so consequently you do everything you can to see that you have the highest integrity type of supply. That means not only expertise in the business of producing coal, but also financial stability and also a good reputation for having been able, labor problems and other things, to live up to your commitments in the past.

Now, that's background, but then you've still got to have the amount of coal in the ground that is required to take care of the type of an obligation I've been speaking to. In other words, you've got to be able to sell coal that's in the ground, and whether you can produce a certain rate doesn't mean much, as long as it is big enough to take care of this plant, but you've got to have the coal in the ground that you are in a position to mine to supply that plant for the "X" years that you contract for.

Q Mr. Gamble, in terms of the responsibility [1264] for buying coal by a utility, is this a low echelon or a medium echelon or a top echelon management responsibility?

A Well, I'd say that it's medium to top. Some of the detail work, of course, is done by people further down the line, but it would be a very responsible department head. In the days when I was, say, broadly responsible for our coal purchasing, Mr. Covell, who is a very responsible and a very well paid man, was in charge of that among his other duties, and he was an expert on the subject of buying coal. Now, he had a certain amount of supervision from me, and we were both responsible to the executive committee and ultimately to the Board of Directors for such things as very large contracts. If you sign a contract for \$130 million, why, you want to have a pretty good company feel of that before you undertake to do so.

Q Would you give me, Mr. Gamble, sir, your opinion with respect to the bargaining power that a utility has in negotiating contracts for the supply of coal?

A Anytime that you are in a position to sign up over a period of 15 or 20 years for a block of business between \$50 and \$100 million, you've got power [1265] in the market, and the coal producers can get hold of a large contract, which would run over a number of years, why, they know what they can do, they know what they can afford to do in the shape of opening mines and buying machinery, and it's a very important thing to them.

Consequently, there is great economic power in the hands of the coal purchaser.

[1266] Q Mr. Gamble, I show you what has been received in evidence as Defendants' Exhibit 102, which is a report of the National Fuels and Energy Study Group to the Committee on Interior and Insular Affairs of the United States Senate, dated 1962.

If you will, please, turn to page 274 of this document. With respect to the matters set forth in paragraph 1 on page 274, Mr. Gamble, I would like to know whether you agree or disagree with the following statement, as of 1962:

(Reading.) "Competition among fuels is a complex of economic, technologic and political forces. The three fuels, coal, oil and gas, compete with one an-

other for the electric energy, space heating and process heat markets. Electric energy, including hydro power, then competes with coal, oil and gas for parts of these same markets."

A That was certainly true in 1962 and partially true today.

Q In what respects is it only partially true today?

A Well, we have other competitors. We didn't think about in 1962—we didn't really realize in '62 [1267] how much competition there would be shortly from the atomic plant.

Q Would you please turn to page 289 of this document.

A I have it.

Q In the second full paragraph on that page the following is stated:

(Reading.) "The power generation market is probably the best mirror of what happens in inter-fuel competition. Minor differences in delivered price multiplied by very large quantities can amount to large sums of money to the user. Costs associated with utilizing fuels, handling, storage and entry facilities, also are large. The electric utilities are among the most well-informed buyers of energy and the quickest to take advantage of price differentials and changes in technology of utilization. Since electricity can be generated equally well by gas, oil or coal, no single fuel has an impregnable position in this market."

Would you agree or disagree with the portion I just read?

A That's correct.

[1268] Q I am sorry, sir.

A That's correct.

Q You would agree?

A None of them have any lock on the market.

Q Mr. Gamble, I show you what has been received in evidence as Defendants' Exhibit 150, which is an excerpt from the National Power Survey, a report by the Federal Power Commission, dated 1964 and published by the United States Government Printing Office.

First, Mr. Gamble, were you involved and, if so, to what extent, with respect to this National Power Survey?

A When this National Power Survey was started, I was requested by Mr. Swidler's office to be a member of the committee from the power companies who made a contribution to this study for the purposes of having the staff of the commission basically put together the final report, and I did work on that for the period, I imagine, about two years. I was chairman of one of the sub-committees on peaking, let's call it, and I was a member of, oh, four, five or six various committees in the some 17 or 18 various sub-reports that were as parts of this study.

[1269] Q Would you turn to page 54 of this document, please.

A (Witness complying.)

Q With respect to the second sentence in the first paragraph on this page, which reads as follows:

"Just as nuclear technology is shooting at a continually moving target and attempting to overtake conventional steam electric generation, nuclear technology in turn is expected to set a continually lowering cost target which the fossil fuels and their modes of transport will be forced to meet."

Do you agree or disagree with that statement?

A I agree with it.

Q Turn, please, to the preceding page of this document.

A (Witness complying.)

Q In the first full paragraph on the page, the following is stated, and I will in reading it make an amendment to it which I am sure you will notice as I go.

"In determining the type of fuel to be used for electric generation, there are a number of factors to be reviewed and evaluated. [1270] Each of these has a bearing on cost and influences the degree to which an electric utility is able to meet its obligation to provide reliable service at a reasonable price. The cost of storing, handling and in some instances disposing of the fuel product are economic factors

which can make a low-cost fuel the most expensive fuel. In locations where land costs are high and areas heavily congested, these costs become a major consideration in selecting a proper fuel. In some areas, operating conditions such as air control regulations may justify a premium fuel. Therefore, while a general picture can be drawn concerning the availability and price of fuel, the final determination in selecting a fuel or fuels for a particular plant must be based on the specific facts pertinent to that plant and its location."

Mr. Gamble, would you agree or disagree with the statements contained in this report as I have just read them?

A Yes. I think that is certainly true.

Q Mr. Gamble, were you aware, I believe it was [1271] in 1968, of the proposal made by Humble Oil to sell coal to the Union Electric Company?

A I am not sure I was acutely aware of it at that time. I probably heard of it, but I do not recall at the moment that I did.

MR. FUTTERMAN: Your Honor, I would like to make a statement for the record at this point.

As you know, the Pretrial Order No. 2 called for defendants to submit to the Government the expected testimony of the witnesses who would appear at the trial. I believe, although I haven't made any objection, that Mr. Hedlund is getting into a number of areas with this witness which were not specified to us in his letter of June 6th, 1969.

This may have some bearing or effect on the length of the cross examination.

MR. HEDLUND: Your Honor, I would be pleased to get that letter. I also want to point out that Mr. Futterman took Mr. Gamble's deposition. He has talked with Mr. Gamble on numerous occasions as to what he was likely to testify to, as recently as last evening.

I do not believe at this point that I have gone beyond any of the subject matters set forth in my initial letter, with the possible exception of this [1272] present line of inquiry which I believe is responsive to information

that the Government developed with respect to the examination of Mr. Tomey.

[1273] MR. FUTTERMAN: Well, I will just say at this point that at no time during my conversation with Mr. Gamble, nor during his deposition, did matters relating to Union Electric's fuel purchasing policies or his experience at Union Electric occur. The only thing that was brought out during the deposition was the fact that he was employed by Union Electric for the period he specified.

I am not making any objection, but I would just like to—

THE COURT: All right, let's proceed.

BY MR. HEDLUND:

Q Since that time, have you become aware?

A Yes, I have.

Q Mr. Gamble, what, if you can tell me, was the proposal by Humble and what were the results of its evaluation by Union Electric?

A As I now recall it, having looked into the matter more recently—I don't recall it in 1958—they offered to supply coal for our Labadie 2 unit. That was more recent than 1958, though.

Q I thought I said 1968.

A 1968. I realize I am wrong there.

In 1968, which, of course, was after my [1274] term of office with the company, but as a director I would have an opportunity to hear about it at least.

The proposition which I have recently learned consisted of supplying or offering to supply a full-fledged million and a half tons a year over a period of I think it was 20 years of coal from their mine up in the Springfield area.

Now, there were three things in the analysis which militated against that contract. The first is that it happens to be particularly high sulphur coal. Most of our coal we think of in terms of 3.4 to 3.5 percent sulphur. As I understand it, this coal was 3.5 to 4 percent sulphur which in these days and times is a pretty bad start.

Furthermore, it is very low BTU per pound, only 9,500 BTU per pound as against ten-five or eleven of most of the coals we get, and twelve and twelve-five for real good coal which we don't burn much of. But 9,500 is a very low BTU which means there is a lot of ash that has to be handled, because what is not burned is left over to handle through the ash disposal system.

Furthermore, they were handicapped by not having a single rail line haul into the plant. They would have to trans-ship it on a second road.

[1275] Now, there is some advantage to some diversity on railroad supply on account of wrecks and other things, but not when it amounts to a very substantial increase in the freight rate, which in this case it did.

So, the end product was that these people had a coal that was too high in sulphur, that was a poor coal from the point of view of BTU content and consequent handling and burning, and the price was too high. So, it was a very simple decision that they were not going to get the business.

* * * *

CROSS EXAMINATION

BY MR. FUTTERMAN:

* * * *

[1278] Q You testified that a utility has bargaining power in buying coal. Would it be your testimony that utilities have an unfair bargaining power over the coal producers?

A No, absolutely not.

Q Would your opinion be that the bargaining power is relatively equal?

A Yes. There are a number of strong producers of coal. They confront, the utilities, I say, across the buying or bargaining table both with great strength.

Q Is it to the advantage of the utilities to have a number of strong competitive coal producers soliciting their business?

A Yes, it is.

Q Do you believe that Union Electric as a utility

is in a better or worse or about the same bargaining position in relation to the coal producers as TVA?

A I don't see why we are in any better position than TVA. We do have and they do have, too, both a combination of rail and possible water transport. That is quite an adjunct to a competitive situation.

Q What about that same question as applied to [1279] Union Electric vis-a-vis Commonwealth Edison and the coal producers?

A I don't know that our competitive position would be any better. We ought to be able to get a somewhat lower price ordinarily because I think our freight rates to us would be lower or less than theirs, but that doesn't hold to the basic competition situation.

* * * * *

AFTERNOON SESSION—2:15 P.M.

* * * * *

[1325]

RECROSS EXAMINATION

BY MR. FUTTERMAN:

* * * * *

Q Mr. Gamble, referring back to the area which you discussed during your cross and redirect examina- [1326] tions, that is, the area described by the Government as the Eastern Interior Coal Province Sales Area, do you anticipate that within that area in the next ten years that the total amount of electrical generation will greatly expand?

A It should follow the same law as the country as a whole would follow, and roughly each ten years the generation will double.

Q Do you anticipate, Mr. Gamble, that within that area the total tons of coal consumed will increase over the present level?

A The equivalent tons of coal will definitely go up and I would think that the present tons of coal will also go up, but we are in a transition period here when

coal is going to have a fairly rough time until these SO₂ devices get developed, and between now and the next ten years, it is not clear in my mind, and I don't know anyone else whose mind it is clear in, how the situation is going to be handled. It's really a,—well, for a man that's got to do it, it's a nightmare. You just cannot see through that maze.

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[1331]

THOMAS LATIMER,

called as a witness by the defendants herein, having been previously duly sworn, was examined and testified further as follows:

CROSS EXAMINATION

(resumed)

BY MR. SIMS:

Q Back to the mines.

Mr. Latimer, UEC has listed on its reserve books approximately 5.3 million tons of deep coal at its Fidelity Mine, is this not true?

A Yes.

Q UEC may ultimately mine this coal, is this not true?

A It's possible.

THE COURT: What was the answer?

THE WITNESS: It's possible.

THE COURT: Yes.

BY MR. SIMS:

Q Mr. Latimer, UEC has attempted to acquire the Murphy tract at the Cuba Mine for some time, is this not true?

A Yes, for a long time.

Q Approximately how many acres are there in the [1332] Murphy tract?

A 193 acres.

Q You have estimated before, have you not, that there could be approximately one million tons in this tract?

A Something in that vicinity.

Q In 1969, did not UEC acquire at Cuba a portion of the Landis property?

A Yes, a small portion.

Q In 1969, did not UEC acquire at Cuba some coal at the Deakin property.

A Which property?

Q Deakin, D-e-a-k-i-n.

A Deakin, yes.

Q Yes.

Is it not true, Mr. Latimer, that at Cuba UEC has mined coal under 90 feet of overburden?

A Yes, indeed.

Q In fact, it has gone up as high as a hundred feet, is this not true?

A No, sir.

* * *

[1340] MR. SIMS: Your Honor, the witness has testified among other things, to the fact that in January of 1970, [1341] UEC exercised its option to acquire the D. Harris property at Fidelity, which property contains approximately 1,700,000 tons of coal.

The witness also testified that these reserves do not appear on the latest reserve schedule of UEC which is dated December 31, 1969, and this property does not appear on Defendants' Exhibit 60-D.

The Government will not move to strike Defendants' Exhibit 60-D, which shows that UEC's reserves at existing mines are stated at 52 million tons, approximately, and have "a potential acquisition at UEC's present mines" of approximately 3,600,000 tons, as long as the Government will not be precluded from introducing in our rebuttal case evidence to show that these figures are not complete.

THE COURT: You certainly have that right at all times.

MR. SIMS: Fine.

THE COURT: Is there any question about the statement made by Mr. Sims here?

MR. HEDLUND: Your Honor, I am sorry, but may I have it read back? I am sorry to burden the Court with—

THE COURT: All right.

(Record read by the reporter.)

[1342] MR. SIMS: We have no further questions at this time, your Honor.

THE COURT: Do you accept it?

MR. HEDLUND: Your Honor, we will accept that, but we have some redirect examination.

THE COURT: Well, you have that right.

MR. HEDLUND: Yes.

THE COURT: All right.

MR. IRVING: Your Honor, may I have a moment to consult?

THE COURT: You may.

Well, all we are dealing with is the introduction of this document.

MR. IRVING: Yes, sir.

THE COURT: I just wonder what the redirect is.

MR. IRVING: Well, some of the redirect intends to go into the matters raised by Mr. Sims a moment ago.

THE COURT: Well, all I was dealing with was the introduction of the document here. They are not objecting to the document. The document is in evidence.

Now, I just inquire in that the direct examination was to lay the foundation for the introduction of the document, the Government cross examined to indicate whether or not the document would be admissible, [1343] and the Government now concedes that it is admissible, subject to that condition.

So, I ask, what would the redirect examination be on it?

* * * *

[1371]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 1632

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GENERAL DYNAMICS CORPORATION; THE UNITED ELECTRIC COAL COMPANIES; and FREEMAN COAL MINING CORPORATION, DEFENDANTS

Before HON. EDWIN A. ROBSON, Judge,

Monday, April 13, 1970,

10:30 o'clock a.m.

PRESENT:

MR. JOHN THOMAS CUSACK,
MR. ROBERT L. EISEN,
MR. RONALD L. FUTTERMAN,
MR. HUGO SIMS, and
MR. RICHARD J. BRAUN,

appeared for Plaintiff;

MR. REUBEN L. HEDLUND,
MR. DONALD G. KEMPF, JR., and
MR. RICHARD H. IRVING, III

* * *

[1376] MR. CUSACK: I am referring to page 1222. At that time, and it did come as a surprise to us, Mr. Hedlund asked us what the witnesses would testify to. We stated that in regard to Mr. Hooper of Ayrshire Collieries, on page 1222 we would go into those matters, and we said that it is believed that is all we would presently ask him—Mr. Eisen said, "That is

all we presently have in mind," and Mr. Cusack said,
 "This is all we have presently in mind."

[1377] On Friday when we had the day off, I had an opportunity to review the file we had on Mr. Hopper. I then told Mr. Hedlund, I called him immediately after I had reviewed that file, and told him that in addition to the matters set forth at page 1222 of the transcript in reference to the expected testimony of Mr. Hopper, we may possibly ask Mr. Hopper three other matters: the availability of strip and underground coal reserves in Illinois; the cost to Ayrshire of its coal reserve acquisitions; and the mineability of the Industry Field.

In regard to Mr. Shumate, your Honor, we told Mr. Hedlund and the Court at page 1223 what we would ask him there. We certainly anticipated—we said we would examine him on the future strip mining possibilities in Schuyler and McDonough County areas.

I told Mr. Hedlund on Friday after reviewing Mr. Shumate's file that in addition to the possible testimony of Mr. Shumate as set out at page 1223 of the transcript, we may possibly ask him regarding the availability of strip and underground coal reserves in the Midwest and the cost to Zeigler of its acquisition of coal reserves.

We believe, your Honor, that this does not substantially change the testimony of the witness.

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[1382] NICHOLAS T. CAMICIA,

called as a witness by the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. IRVING:

Q Please state your full name and home address for the record, sir.

A My name is Nicholas T. Camicia.

THE COURT: Would you spell your last name, please.

THE WITNESS: C-a-m-i-c-i-a.

BY THE WITNESS:

A (Continuing) My home address is 85 Country Club Lane, Pelham Manor, New York.

BY MR. IRVING:

Q Mr. Camicia, by whom are you currently employed?

A The Pittston Co.

Q What is your business address, sir?

A 200 Park Avenue, New York, the Pan-Am Building.

Q What is your current position with the Pittston Co.?

[1383] A I am president and chief executive officer.

Q For how long have you held that position?

A A year.

Q Would you please briefly describe the fields of enterprise and operations of the Pittston Company?

A Well, briefly, the Pittston Company is a holding company diversified into principally coal mining. We also have armoured car services through our Brinks operation. We are a fuel oil distributor in the metropolitan area of New York and New England and Canada. We also have an interstate trucking company.

Q Approximately what would the annual production of your bituminous coal be, sir?

A We are presently at the rate of about 23 or 24 million tons a year.

Q To whom do you sell that coal principally?

What type of coal is it, may I ask?

A Principally, it is about 85 percent metallurgical coal. The remaining is utility and general use coal. We sell approximately 40 percent of our production for export.

[1384] Q Mr. Camicia, could you briefly describe your educational and professional background up until the year 1965?

A I am a graduate mine engineer from Virginia Polytechnic Institute. I went to work for a coal company called Island Creek Coal Company immediately after graduation. I spent a year or a year and a half as a common laborer in order to get some experience. Then I held a job as an engineer for a couple of years, proceeding from that to a section foreman or first line

foreman, superintendent, general manager, and finally vice president of operations and then I served as executive vice president of that company and on the board of directors.

Q About what year was it that you were named to the Island Creek Board of Directors?

A I think it was 1962. And at the same time I became executive vice president.

Q Did you serve in the Armed Forces at any time during this period?

A Yes. I forgot. During that period I was off for about five years and was in the Armed Services. Part of my service was on the staff of General Eisenhower, rehabilitating the coal mines of Holland and Germany.

[1385] Q Was most of your mining experience and training during this time in deep mining?

A Practically all of it. Essentially all of it.

Q Mr. Camicia, could you please describe the nature of your experience and positions held from 1965 to the present.

A In 1965 I came with the Freeman Coal Mining Company, which is a subsidiary of General Dynamics, as executive vice president. I held that position until January 1, 1968, at which time I was made president of Freeman Coal Mining Corporation and the United Electric Coal Companies.

During the time I was executive vice president of Freeman, of course, I had mainly responsibilities in the area of the deep mines of Freeman Coal Mining Company.

Q I take it about a year ago you were named president of Pittston Company, is that right?

A Yes. April, 1969.

Q During your term as executive vice president of Freeman were you primarily concerned with the deep mining operations as opposed to the strip mining operations?

[1386] A Yes. Almost entirely. I had an occasional discussion on the strip mining operations, but I had no responsibility whatsoever.

Q During your term as president of Freeman and UEC, did you become familiar with the strip mining operations of United Electric?

A Yes, I did. I was principally interested in the operations of the pits, and I spent a lot of my time during that year as president trying to find additional reserves, strip mining reserves, for UEC.

[1387] Q During your career in the coal industry, Mr. Camicia, would you say your experience has covered all phases of the business?

A I don't think there is any question about it. At least I have covered every phase possible in the deep mining.

Q As the chief executive officer of a deep mining organization, would you please give us an estimate of about how much of your time in the past year has been spent at the Pittston mines?

A I would estimate that I have spent about 80 percent of my time since I have been with Pittston on the coal mining phase of the company.

Q Does this include actually going underground—

A Oh, yes. I have covered every section, every mine and every facet of the operations.

Q Would it be normal in your opinion for the chief executive officer of a deep mining company to spend about this much time at the mines gaining first-hand knowledge of the mining operations?

A Well, deep mining being a highly technical and very difficult operating type of business, I would say that any prudent executive must spend a great deal of his time in order to become fully familiar with the operation.

[1388] Q Could you please briefly describe the different types of operations which are included in the term "deep mining"?

A Essentially on a broad basis there are perhaps, you could say, three types of deep mining, one of which would be called drift mining.

Drift mining means that the coal seams are exposed above the water level and are uniformly flat or level. The operation consists merely of punching or going into

the mine from the outside. It is the easiest type of mining, of deep mining.

[1389] The second phase could be classified as slope mining, which is a seam of coal below the creek bed or water level. It consists of putting in a slope of about a maximum of 17 degrees with a belt to bring out the coal.

These types operations are usually limited to a maximum of about 300 feet below the surface.

Then we have what we call shaft mining or strictly deep mining, and these will vary from, say, 300 feet down to, in this country, a maximum so far of about 1,600 feet. In Europe, of course, they go down as much as 4,000 to 5,000 feet.

In this country, it is 1,500 feet. That means you must sink a vertical shaft or several of them, so that the coal is hoisted by skips and hoisting machinery and the coal is brought out in that manner.

Q When referring to slope mining, you mentioned a belt. Could you further explain that?

A The belt is merely a means of lifting the coal from, say, the 300 foot level to the surface, as opposed to hoisting it vertically. It comes up a slope on a belt, and this, of course, is a cheaper method and an easier method of extracting the coal, bringing the coal out, than the shaft type of operation.

[1390] Q Would it be in the order of a conveyor belt?

A Yes. A belt conveyor.

Q Mr. Camicia, could you please describe some of the major problems faced in setting up a deep mining operation?

A Well, a deep mining operation is a very, very difficult type of operation and highly technical. Before you can even start a deep mining operation, you must have expert knowledge and know-how as to how to explore the seam. You must drill the seam, fore-drill the seam, to try to study what type of roof you will have, the roof being the seam rock above the coal seam.

You must try to determine how much gas will be emitted by this coal seam as you extricate the coal, as

you extract it. You must determine how much water you will perhaps have in this seam, so that you can plan on the drainage of that mine.

[1391] You must determine of ventilation that is needed to neutralize or to carry away the gaseous emissions and to comply with the Federal laws.

You must determine in advance what type of mining machinery can be used or should be used.

All of these items have a sense of risk about them, because you can make one bad judgment in any one of these items and your mine could be a failure. Every deep mine that is put in is a risk proposition from the word go.

Q You mention the planning for a deep mine. What level of employee would take part in this planning?

A This would be from the chief executive officer or the top mining man in the organization down through the engineering group and the operating group. It is the top management level really.

Q Are these problems that you mentioned similar in nature to those faced by strip mining outfits?

A Absolutely not. It is just a different ball game, a different business altogether.

Q Were a strip mining operation to attempt to open a deep mine, could it adapt and carry over knowledge and expertise to the deep mine which would enable it to carry out the deep mining of coal?

[1392] A I know of no phase that could be carried over, except perhaps in the marketing and sale of the coal.

There is no correlation whatsoever between the engineering or management or knowhow or knowledge of mining.

Q Would there be any similarity in the type or nature of labor force used at the mine once it was opened?

A No. It is an entirely different thing. You have to understand that strip mining is very, very similar to construction work. It is just an earth-moving problem. You can go out and pick up any kind of construction worker and start up a strip mine. But in deep mining it is a very different business, and it takes a different type of person, even insofar as attitude.

Q Mr. Camicia, based on your knowledge as former president of both Freeman and UEC, do you know if UEC has or has had any managerial level personnel, including mine engineers and superintendents, who have had deep mining experience?

A To my knowledge, at the time that I was there there was no one that could be classified as knowing anything about deep mining.

[1393] Q Based upon your knowledge and experience as former president of UEC and Freeman, and based upon your knowledge and expertise as a deep mining engineer and executive, do you think that it is likely that United Electric could make a successful grass roots entry into deep mining coal. By "grass roots," I mean an entry made through internal expansion rather than affiliation with a deep mining company.

A I don't see how it could possibly at all. I don't see how they could even make a start at it. It would be very difficult to even get any notion to try to do it.

Q What factors lead to this opinion, sir?

A Well, because I know the technical requirements of opening up, developing and operating a deep mine. The problems are so different as compared to the strip mining and so foreign to strip mining that it is just a different business altogether; because they are in the strip business would give them no reason whatsoever to think they could go into the deep mining business, no more so than—and I presume you are not a miner—no more so than you could go into the deep mining business.

THE COURT: You would be surprised at how versatile [1394] some attorneys are.

MR. IRVING: I will stipulate I am not a miner, your Honor.

BY MR. IRVING:

Q Do you know, from your experience, if the availability of qualified deep mining personnel—and I am including all levels now—is greater or lesser than those equivalent level personnel for strip mining operations?

A Yes, I guess I could be classified as an expert on that, because—and it is a good thing for we mining

engineers that there is a great, great scarcity of qualified managerial people in the deep mining, and there has been for a number of years.

[1395] The situation now is even worse and more critical, as a matter of fact.

Now, insofar as strip mining is concerned, and during my tenure as president of UEC, I had no problem going out and finding people, because I could go to a good construction job and pick up a pit foreman or a maintenance foreman that knew how to run trucks and take care of them. But to get a good foreman or superintendent for deep mines is entirely a different situation.

Q Mr. Camicia, from your personal experience do you know of any strip mining firm which has made a successful grassroots entry into deep mining in, say, the last 20 to 25 years?

A I know of none. I can only recall several years ago that Kennicott, who is a company that I think is principally in metal mining, copper mining, and so on, approached me to try to help them get into the coal mining business, the deep mining business. They had a number of what they called deep mine reserves, and they were trying to get into the business by employing someone like me to build up an organization and to try to get started.

I rejected the job. I advised them that [1396] it would be almost an impossibility to try to get into the business in that manner and suggested that they go out and try to acquire the management by acquisition. I think they did that. Peabody.

MR. IRVING: The defendants have no further questions at this time.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. EISEN:

Q Mr. Camicia, isn't it a fact that one of the reasons for the shortage of technically qualified help in underground mining is due to the fact that the coal industry

was depressed up until about 1960, which led to few people becoming interested in that field?

A I think you could say that that is one of the factors that perhaps kept young men from going into college and studying mine engineering, because the opportunities were not great.

Q Following 1960 the future of coal became much more optimistic as a successful enterprise, did it not?

A No. That is not true at all. From 1960 to 1963 is probably one of the worst periods in the coal business that you have had.

* * *

[1398] Q Are you aware of the fact that Peabody has been retraining some of its strip miners to work in deep mines?

A No, sir, I am not.

Q Haven't other companies been doing this?

A Not that I know of.

Q You mentioned the similarity of deep mining and strip mining at least to the extent of the marketing of the coal, did you not?

A Yes, sir.

Q Would it not also be true that there was a similarity insofar as the processing of the coal is concerned and the exploration for reserves are concerned?

A Well, you are putting two things together. Let's first talk about the processing of coal, if you wish. There is some similarity between the processing of coal, but I included that with marketing. That is part of marketing. That is the processing and marketing and sale of coal.

But insofar as exploration work, there is very little similarity in that the only similarity is that in both cases, you find out whether there is coal there. But how to analyze what you have seen, that takes an expert in deep mining to determine whether that coal [1399] is minable by deep mining methods.

The strip miner can only determine whether it is minable by stripping methods.

Q You are aware of the fact, are you not, that UEC

acquired deep mining coal reserves some years prior to your coming with the company?

A Yes, I knew that.

Q Did they continue to acquire some of those reserves during your association with the company?

A Not while I was associated with them. As I said, we were looking for principally strip reserves for UEC during my tenure as president. I must say that during that time, I had a blank check from General Dynamics to get whatever strip mine reserves we could possibly find. I used every person available on this proposition.

Now, in looking for strip mining reserves, some of them are connected with deep mine coal. You cannot in certain instances accept or get strip coal without accepting responsibility for buying the deep mine portion of those reserves.

Q But you did learn, did you not, in the course of your association with UEC that they had acquired approximately 50 million tons of deep reserves at Round Prairie?

[1400] A Yes, sir. I knew that we had those reserves.

Q When did you first hear of the Round Prairie Field?

A Not really until I became president, which was the first of January 1968.

Q Did Mr. Nugent tell you why UEC had acquired Round Prairie reserves?

A I don't recall that he did.

Q Did you have any discussions along that line?

A After I became president, we had some discussions as to the possibility of mining these reserves. We had some feasibility studies made on it and some market feasibilities. It proved that it wasn't the right vintage yet, meaning that it may be mined someday, but it certainly wasn't time yet because of the market conditions.

Q Did you say that you had some feasibility studies made?

A Yes. On my own, yes.

Q What did those feasibility studies consist of?

A It consisted of studying the bore holes, determining what type of top there was, what the height of the coal was, what the quality of the coal was, what the drainage problems would be, what type of operation [1401] would be required to extricate the coal, what type of machinery would be required to mine the coal, what the capital costs were, and what the cost of mining would be, all of which proved that the coal could not be mined at a profit.

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[1418] "Q Mr. Camicia, assuming that a company owns or controls 100 million tons of underground coal, that such coal may be mined at a profit, either now or within the next 10 years, and that company is experiencing in processing, shipping and marketing of coal in the area, and that you have six [1419] to eight million dollars cash—given these facts, would it, in your opinion, be possible to hire competent personnel to put in a slope mine costing approximately six to eight million dollars?"

THE COURT: Now, do you recall the other question?

THE WITNESS: No, your Honor. I would like to have it read.

THE COURT: Read the question.

(The question read by the reporter, as follows:

"Q Does the foregoing hypothetical that I have given you apply, would you say, to United Electric as you know it, with regard to its financial position and its reserves?"

BY THE WITNESS:

A Well, to answer the first question, I don't think it is possible for the hypothetical company to do as you have so indicated.

Secondly, United Electric Coal Companies certainly was not in a position to go into a deep mine venture.

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[1422] BY MR. EISEN:

Q You do not know, do you, Mr. Camicia, whether had UEC not become affiliated with Freeman, it would

have gone into the underground mining business?

A I don't know the answer to that.

Q You cannot answer that?

A I would just have to guess.

Q It might have gone into the underground mining business had it not been associated with Freeman, is that right?

A Had they not been associated? I don't know that. All I can say is they would have made a mistake if they had tried it.

Q Are you aware of the fact that Carter Oil Company, an affiliate of Humble Refining Company, has gone into deeper mining in Illinois, is going into the deep mining business?

A Yes, sir, I am aware of that.

Q Are you familiar with the particular reserves they are developing?

A Yes, sir.

Q What is the seam thickness?

A About five feet.

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[1423] Q And it is a fact, is it not, that Humble, to your knowledge, has never been in the underground mining business?

[1424] A To my knowledge they have not been in the underground coal mining business.

Q So that would be one company that would be an exception, would it not, to your statement, if you want to call it an exception, that it is difficult if not impossible for someone inexperienced in underground mining to go into that business?

A I don't know that it is an exception yet, because, as you might say, the jury is still out.

Q But you do know that this company has contracts to supply Commonwealth Edison with three million tons a year at its Powertown Station?

A Yes, sir, I know that.

Q Are you familiar with the Inland Steel Mine?

A Yes, sir.

Q When was that developed?

A Perhaps starting in 1968, something like that, I believe.

Q Who developed that particular mine?

A Inland Steel's coal mining operation group.

Q When did they first go into the coal mining operations?

A Possibly 50 years ago.

Q Where was their mine located?

[1425] A Wheelwright, Kentucky.

Q Where is that?

A Wheelwright, Kentucky. That is in eastern Kentucky.

Q What part—

A In the United States.

Q Pardon me?

A I said eastern Kentucky, in the United States.

Q Do you know whether or not they brought their personnel from their eastern Kentucky operation to open up their Illinois mine?

A Yes, they did.

* * *

[1427] Q Are you familiar with the Parton Coal Company?

[1428] A What is that?

Q Parton, P-a-r-t-o-n.

A No, I am not.

Q There are, are there not, smaller companies than Freeman in underground coal mining in Illinois?

A Certainly there are, because they are No. 1. If there are any more of them, they have to be smaller.

Q About how many would there be?

A I would guess five or six or seven companies.

Q How large an operation would you say an underground mining company would have to have in order to have the know-how to open up a new mine of, say, one million tons production a year?

A I don't know that there is a definite figure, but I would say it should be in the neighborhood of five million, four million tons plus, before they could support the proper staff to do the work.

Q When you say five million tons, you are not talking, are you, in terms of technical know-how? You are talking in terms of financial resources, aren't you?

A What I am trying to say is that it takes a certain amount of business to support a staff large enough to do your work. That is what I am trying to say.

Q My question was not clear. I am sorry. I [1429] wish you would apply this to United Electric. Assuming that you do have a large corporation already engaged in strip mining, about how large a company would they have to acquire in order to acquire the technical know-how to open up, say, a slope mine at Round Prairie?

A I understood your question and my answer was four to five million tons.

Q What is there about the extent of that operation, the four to five million tons, which is necessary to acquire the know-how to open up a deep mine?

A I will answer that again. In order to do business, which apparently you do not know too much about, you have to be able to support a staff. You have to be able to make money so you can have staff that has the knowledge. You can't have a dog hole and have sitting on the staff three or four vice presidents of engineering and maintenance, and so forth. You have to be big enough to have a staff that can support you.

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[1439] Q You did not attempt to acquire any reserves in LaSalle County?

A Where is LaSalle County? Orient me. I am not that familiar with this state. I am a newcomer here.

Q That is in the area of—

THE COURT: Indicate on the map to expedite it.

THE WITNESS: Show me about where it is.

BY MR. EISEN:

Q It is in central Illinois.

A Near what city?

Q Well, let me ask you this, Mr. Camicia. What counties in the state did you have your people explore in for coal reserves?

A My instructions—

MR. IRVING: Your Honor, I think it is unclear to me at any rate, and perhaps it is to the witness, too, whether Mr. Eisen is speaking of acquiring reserves for UEC or Freeman or both.

THE COURT: Would you specify, Mr. Eisen?

BY MR. EISEN:

Q For UEC.

A My instructions to my staff was to find any reserves they possibly could in the State of Illinois, Indiana, Missouri or any place else in the United States [1440] that could be stripped for UEC. We had a team that searched all over the country. I don't know which counties they went in, which counties they did not go in, but we looked at every possible area in Illinois where there are strip reserves that could be available.

Q What were your instructions to them insofar as the quality and quantity of reserves they should look for?

A I didn't even put any reservations on it. I just said find some coal that could be stripped, and then I would decide whether it was worth buying or not. Anything that can be stripped, just so it is black. That is really my instructions to them.

Q To whom did you give these instructions?

A I gave them to Burl—I can't remember all these guys' names now, but one was Burl Jensen, who is the company geologist. I gave the instructions to Peter—the chief engineer, Peter Spartan. I gave the instructions to Tom Latimer. I also gave instructions to three people in Freeman to help United Electric look for strip reserves. They were Jack Madsen, Bill Mullins and Tom—I can't remember his name, but he was an engineer with Freeman named Tom, an older fellow.

Q Did they ever report back to you any specific [1441] reserves that you can recall, any particular fields they found?

A Yes. They found a field in central West Virginia called, what I call, the LaRosa property. They had some potential of strippable reserves, but it was tied in to deep mine reserves, and the study of the overburden and the quality of the coal was such that you just couldn't make a profit of it, so we just let it go by the

boards. It is still sitting there if anybody wants to buy it.

Q Did they report any strip reserves to you in the State of Illinois?

A Only very small patches of contiguous reserves that we tried to get and in most cases were unsuccessful.

Q You did not have them look for any deep reserves?

A You asked me about UEC. Now you are asking me about Freeman?

Q While you were at UEC.

A I did not have UEC looking for deep mine reserves, no.

Q Where would you draw the line between a deep mine reserves, sir, and underground?

A Well, it depends on a lot of things, but in [1442] general you can say about a hundred feet. If the overburden is not solid rock. But if it is solid rock you couldn't even afford to go that high.

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[1444] Q Would you say that a man whose experience had been exclusively in deep mining could successfully run a strip company?

A After a short period of training, yes.

MR. EISEN: I have no further cross, your Honor.

THE COURT: All right. Any redirect?

MR. IRVING: Your Honor, may I have a moment to consult?

THE COURT: You may.

(There was a brief interruption, after which the following further proceedings were had herein, to-wit:)

MR. IRVING: Thank you, your Honor.

THE COURT: All right. You may proceed.

REDIRECT EXAMINATION

BY MR. IRVING:

Q Mr. Camicia, during the course of the cross examination, you referred occasionally to what you called a dog-hole mine.

Could you please define for us and for the Court what you mean by a "dog-hole."

A Well, it is a general term used by coal mining people, meaning a very small operation, employing perhaps less than 20 people, usually a family-run organization [1445] that produces up to, say, from 100 to 200 to 300 tons per day.

Q How long do these dog holes generally stay in operation, if you know?

A Usually a dog hole is good for maybe six months or a year. Then they get their house so dirty, they have to move rather than build a new house.

Q Could such a mining operation as you have described and defined as a dog hole support a modern long-term contract business in the coal industry?

A Oh, certainly not. Any customer that would consider a dog hole as a source of supply—well, they just couldn't do it. They may get it on a spot basis temporarily in an emergency, but they certainly wouldn't make a long-term contract with anybody, I don't think.

Q Sir, when you stated that there were, I believe, five to seven companies in Illinois who are deep miners smaller than Freeman, did that include any companies which you would consider to be dog-hole operations?

A No, sir. I wasn't thinking in those terms, no, sir.

MR. IRVING: We have no further questions, your Honor.

[1446] THE COURT: Any recess?

MR. EISEN: No, your Honor, except may the record show that there has been an extensive deposition with Mr. Camicia's testimony on some of the same subject matters.

THE COURT: All right. Thank you, sir. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: You may call your next witness.

MR. KEMPF: Your Honor, can we have about a five-minute recess?

THE COURT: In other words, you want to recess until 2:00 o'clock?

MR. HEDLUND: Well, no, your Honor. If we could have about five minutes—

THE COURT: All right. We will take a five-minute recess.

(There was a short recess, after which the following further proceedings were had herein, to-wit:)

THE COURT: Are you ready to proceed?

MR. KEMPF: Yes, your Honor.

THE COURT: You may call your next witness.

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[1448] SAMUEL F. SHERWOOD,

called as a witness by the defendants herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KEMPF:

Q Please state your full name, sir, and spell your last name.

A Samuel F. Sherwood; S-h-e-r-w-o-o-d.

Q What is your home address, Mr. Sherwood?

A 1221 Golden Hill Drive, Indianapolis, Indiana.

Q By whom are you employed, sir?

A I am employed three ways. I am president of the Calvert Youngblood Coal Company. I operate an independent consulting firm by the name of S. F. Sherwood & Associates. More recently, I have become vice president of Empire Energy Corporation, which operates a small drift mine in Colorado.

Q Could you describe for us Calvert Youngblood Coal Company's operations.

A It is a strip mine operating about an 18-yard shovel, mining very high quality coal, thin seam, overburden running up to about 80 feet. The coal almost [1449] exclusively goes into the metallurgical market to make foundry coke.

Q How long have you been in the coal business, Mr. Sherwood?

A Well, I have been in the coal business all my life. My father started mining in Danville, Illinois, in 1913.

After graduating from Harvard and serving four years during World War II in the Navy, I went into the coal business with my father, which by then had developed into the Stonefort Coal Mining Company, and worked for it until its sale to Peabody in 1966.

Q Could you please speak up a little louder so that all counsel can hear you.

A All right.

Q What was your position with Stonefort at the time it was sold to Peabody Coal Company?

A I was president of the corporation.

Q What properties was Stonefort operating at the time it was sold to Peabody?

A The company operated the Will Scarlet Mine in Saline and Williamson Counties, Illinois, which is in the southern Illinois freight district, and the Allendale Mine in Stark County, Illinois, which is in the [1450] Fulton-Peoria freight district.

Q Mr. Sherwood, did any of Stonefort's mines reach the end of their mine life while you were active in the company's management?

A Yes. Prior to the Allendale mine, we had a mine known as the Little John mine in Knox County, Illinois, just west of Peoria. It did reach the end of its reserves.

Q What, if any, marketing problems did the mine face as its reserves neared exhaustion?

A Well, we had a number of problems, most of them in keeping customers and finding replacements for those that were lost. The word got around that we were on our last few years. We had no success, obviously, in making any long-term contracts which were coming in with utilities. Even the regular year-to-year customers with which we had had good relations began to fall off. We really had to resort to lowering our price and struggling along as best we could, which gave our last few years a pretty tough financial situation.

[1451] Q Did this affect not only yourself but also your customers?

A Yes, yes. If we had had the reserves, we could have continued to service them. Instead, we could not.

Q Did you have any other mines which experienced similar difficulties?

A Well, a year or two later, our Sherwood-Templeton operation in Indiana, this mine approached the end of its reserve life. It had only a couple of years to go. In that case, with the experience of our Little John operation, we arranged—we made a sale eventually of that mine as a going property to Ayrshire Collieries which had adjacent reserves. They took over our customers, took over the mining operation and continued that operation. As it petered out, as the reserves that we had petered out, they just carried on with their own reserves, and they are still operating.

Q Was that a benefit both to that particular mine and to the customers in your opinion?

A I think so.

Q For what reasons?

A Well, they had a continued supply of coal from the same region. So much of the business, particularly in the utility field, is becoming long term. These [1452] utilities had the knowledge of where their coal was coming from, whereas in our situation prior to selling to Ayrshire, we just were unable to give them the confidence of continued supply that they would have liked.

Q You mentioned that at the time Stonefort was sold to Peabody, you were operating the Will Scarlet Mine in the southern Illinois freight district and the Allendale Mine in the Fulton-Peoria area.

Was the coal mined at Stonefort's Will Scarlet Mine in southern Illinois similar in its characteristics to that mined at the Allendale Mine in Fulton-Peoria?

A No, it wasn't. They were very dissimilar. The Will Scarlet coal was about 2,000 BTU's greater. It had very low moisture versus high moisture at Allendale. Its sulphur was different. The amount of ash and the flagging characteristics, fusion and all this were dissimilar.

Q Are these differences between the two coals a factor in marketing coal?

A Yes, they are. Practically any large customer or small customer, I presume, designs its boilers for the expected type of coal that it expects to burn. If [1453] they attempt to burn a dissimilar coal, they become inefficient and run into operating difficulties and generally have a bad time.

Q What would you estimate the number of boilers designed to burn coal, say, from both your Will Scarlet and Allendale Mines?

A Well, I doubt that there was too much similarity where we could sell one or the other coal. There was not too many similar boilers where they could burn it efficiently. You can burn anything; you can burn match sticks if you want to, but it isn't efficient.

Of course, we never really got to that very much because our freight rate districts were different and our natural markets were in different areas.

[1454] Q Where would the coal from, say, the Allendale mine be sold?

A It was sold practically exclusively in the immediate area of Peoria and west and north until you ran into the Mississippi River where barge competition denied much sales.

Q What about the coal from your Will Scarlett mine in southern Illinois, where was that sold?

A It was sold—we had one major contract with TVA. It went to the Shawnee plant down below Paducah. The balance of that coal went into Wisconsin, practically all into Wisconsin or even further north.

Q Mr. Sherwood, do you have any experience in mining coal by the underground method?

A No.

Q What has your experience been involved in in this time you have been in the coal business?

A Well, it has been exclusively in the stripping end of the business.

Q Did Stonefort Mining Company have any experience in deep mining?

A No.

Q What was their experience confined to?

A Pardon me?

[1455] Q What was their experience related to?

A Strictly strip mining. As I said, my father started out as one of the first strip miners in 1913. The organization had been exclusively strip mining ever since.

Q In your opinion, Mr. Sherwood, could Stonefort have successfully entered into the mining of coal by the underground method?

A No.

Q Why do you say that?

A Well, except for the product, about everything else you can imagine as far as operating is entirely dissimilar. The stripping is a question of moving overburden. Underground operations are making a hole in the ground. There is just no relation.

Q Mr. Sherwood, prior to the time that I contacted you with regard to this lawsuit, did anyone else contact you with regard to this suit?

A Yes. About a year and a half ago, Mr. Sims and Mr. Futterman came down to Indianapolis and talked with me.

Q Did they indicate to you why they wanted to talk to you?

A Well, they indicated that they understood I [1456] was familiar with the midwest coal industry, and they wanted to talk to me in regard to this case.

Q Did such a discussion occur?

A Yes. They spent, oh, about two hours, I guess, with me in my home.

Q Did you ever hear from them again after that discussion?

A Well, no, not until last fall sometime after they heard that you were going to ask me possibly to be a witness in this case. Then they called me, and later on, I believe it was Mr. Sims who came down and talked with me for a short while.

Q They came down a second time at that point?

A Yes.

MR. KEMPF: Your Honor, we have no further questions. Perhaps the Government has a few more today, however.

THE COURT: Can you complete your cross examination in two minutes, Mr. Cusack?

MR. CUSACK: I doubt, your Honor, whether I would be able to, even moving with alacrity.

THE COURT: All right. We will recess until 2:00 o'clock.

(Whereupon, the hearing in the above-entitled cause was recessed to 2:00 o'clock p.m., the same day and date.)

[1458]

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AFTERNOON SESSION 2:10 P.M.
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SAMUEL F. SHERWOOD,

called as a witness by the defendants herein, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

CROSS EXAMINATION

BY MR. CUSACK:

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[1464] **Q** Would the tendency be dropping off because of the disappearance of the smaller size producers?

A No. They are probably the people who need it the most. It is the fact that a sales agent—you really don't need one in dealing with your major customers such as utilities because you make a deal for a long-term, and there it is. You don't need to have a person on the payroll just working off his shoe leather, which you used to have selling to dealers and domestic coal and small businesses which mostly have gone to gas and other fuels in the past ten years and more.

Q Is it a fair statement to say that you don't need a sales agent so much any more because there is a shortage of coal and there is a relative ease in the sale of coal?

A You need a sales person, but usually the sales

agencies charge so much a ton. This is not really a good way to—it isn't fair to the producer to pay the kind of brokerage fee that these people as a rule try to get.

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[1471] Q That was Stonefort that finished a number of capital improvements, had finished making a number of capital improvements, and that the future for Stonefort was bright in 1966 at the time of its acquisition by Peabody?

A We had made the capital improvements, and the future was bright, with the exception of the exact time of acquisition. The major improvement, a 60-yard drag-line at Will Scarlet, wasn't putting out the yardage that we had expected, and we were not producing the coal we expected.

Q But you were reluctant, were you not, to sell Stonefort to Peabody?

A I wish we had gotten a better price.

Q Isn't it a fact that you told the Government you were reluctant to sell Stonefort to Peabody?

A The timing of it was poor. We had been going into a project to put the company in shape where it would be a good property to merge, sell or dispose of in some way. We had some reserves in Gallatin County, which were chiefly underground reserves. We had a bear by the tail there, awfully good, but we didn't see how we could finance them or felt we had the capacity to operate.

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[1474] Q Would it be nearly a half million dollars?

A If my memory serves me right, it was about a million dollars.

Q About a million dollars? The approximate net worth of the Stonefort Company when it was sold to Peabody was about \$8 million, is that correct, sir?

A Seven or eight, yes.

Q Isn't it a fact, Mr. Sherwood, that there were plans at the Stonefort Coal Mining Company for Stonefort to develop the deep coal reserves at Shawneetown?

A We discussed the possibility many times and came to the conclusion that we, as I said earlier, neither had

the capabilities nor the financial ability to develop a mine of the size necessary to compete in today's market.

[1478] Q We are familiar with that.

Is it true, is it not, Mr. Sherwood, based on your knowledge and experience in the coal mining industry in the midwest, that there have been a number of instances where underground coal reserves were later stripped, is that correct?

A In a way, usually—sometimes the reserves that were underground were maybe not counted as very economical underground reserves and deeper stripping made them available, where otherwise they wouldn't be there at all.

If you have a thin seam, they might be underground, but not really be viable reserves under present economic conditions, and deeper stripping equipment make them available.

On the other hand, there has been a lot of good stripping that was ruined by old works years ago.

Q Is it fair to say that, generally, strip coal reserves, or what is thought to be economically mineable strip coal reserves, have increased over a period of time with the development of larger stripping shovels and equipment?

A The reserves have been added to by this equipment. Of course, the shallower stripping has been going [1479] away on the other side. Probably—I don't have any statistics, but you might be adding by going a little deeper from 50 to 60 to 70 or 80, but as this is going on, you are eating up the cream in the 40 and 50 and 60 stuff. So, you would have to study everybody's records to see how things stand as of now. You are adding one end and taking up the other. The addition, in my opinion, is coming pretty close to the end.

THE COURT: Can both sides hear the witness?

MR. HEDLUND: I am having difficulty, your Honor.

THE COURT: Would you speak up a little, please.

THE WITNESS: Oh, yes, sir.

THE COURT: Thank you.

BY MR. CUSACK:

Q You stated, Mr. Sherwood, did you not, that the quality of the Will Scarlett and the Allendale mine coals was substantially different, is that correct?

A That is right.

Q Would that be on a wash basis?

A Yes. Both—well, the Allendale coal had to be washed, no question about that. The Will Scarlett coal in certain markets, probably only to TVA, could have been sold raw. As a matter of fact, for a few months, when we started the mine, we did sell, I think, 70,000 [1480] tons of raw coal to TVA because our preparation plant was not in operation.

* * *

[1485] Q 133 is Will Scarlett.

My question, sir, is this: Isn't it true, based on your recollection and based on these documents, that the BTU rating of the washed coal at Allendale was [1486] approximately the same as the BTU rating of the washed coal at Will Scarlett?

MR. KEMPF: May I have that question read?

BY THE WITNESS:

A No, these are entirely different. As I said in my testimony this morning, there is a 2,000 BTU difference. Allendale has as received washed at 10,444. Except for the carbon here, Will Scarlett had 2,000 more, 12,470 and another one at 12,524 and another one at 12,496.

I think I was correct in saying there is a 2,000 BTU difference in the coals.

BY MR. CUSACK:

Q Would your testimony be that on a wash basis there was also a 2,000 BTU difference?

A Well, those are on a wash basis. That is exactly what it says: "As received."

You have been confused with the dry basis which has no relation to how you sell your coal or what a customer wants for it. He doesn't care about the dry basis because he is getting water and moisture.

Q Is it your testimony or your belief, Mr. Sherwood, that the coal mined at the Will Scarlett mine and the coal mined at the Allendale mine, even though being 2,000 difference in BTU's, could not be used by [1487] the same utility generating station?

A It might be possible that they could use it, but from an economic point of view, they would be very reluctant to. As I said earlier, depending upon—when a utility builds a plant or a large customer, they get some idea where, what region, what types of coal they expect to draw their fuel supply from over the years. They relate traditional freight rates, cost of transportation, coal qualities and coal values in different areas to get delivered cost for a million BTU's, and they design their plant with as narrow a range as possible to fit where they expect the coal to come from.

Q Mr. Sherwood, the evidence in this case shows that the plants of the Commonwealth Edison Company can take a coal with a minimum sulphur of 2.5 percent and a maximum sulphur of 5 percent, a minimum ash of 5 percent and a maximum ash of 17 percent, a minimum percentage moisture of 7 percent and a maximum of 22 percent, a minimum BTU of 9,400 and a maximum of 13,000.

Isn't it true that both the coals produced at the Allendale mine and the Will Scarlett mine would come within those ranges?

A Well, I don't have a table right in front of me, but—

[1490] BY MR. CUSACK:

Q No, sir, it runs—

THE COURT: Let the witness finish his answer, Mr. Cusack, then you can ask him another question.

BY THE WITNESS:

A They could be. Either Will Scarlett or Allendale coal basically fit these specifications, but I think in taking Commonwealth Edison, you are taking a company that has a number of power stations built at different years, and they have this for each station. Undoubtedly

their operating people would try to channel a certain grade of coal, a certain quality of coal, to a certain station where it would most economically burn the best.

Another point of view is that they are such a big buyer, burning something like 15 million to 18 million tons a year, I think, that they just have to buy from more than one producing area in one grade of coal, because they just gobble up everything in one area, and if they wanted to go to Fulton-Peoria and get all the coal out of there, no one else would have any.

Q Commonwealth Edison does buy coal, does it not, from almost every producing district in the midwest?

A Yes.

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[1492]Q Mr. Sherwood, do you believe an Illinois coal mining producer with average net profits after taxes of over \$3 million a year was in a better or in a worse position than Stonefort in going into underground mining?

A I don't know. That is a hard question to answer. I don't think you really have given enough basic facts.

Q Just on the basis of profitability of the two companies.

A You are saying one company has a net profit of \$3 million?

Q Per year, sir.

A Per year? As against Stonefort?

Q Yes.

A I don't know that the profitability makes too much difference. The question is do you have the know-how to do it and on what scale are you going to have to learn.

Q Mr. Sherwood, does Stonefort ever attempt to acquire any strip coal reserves from any other coal producer?

A Well, we did in the Allendale situation. We took over a whole reserve area, which was rather limited, but something that we thought we could do with our used equipment.

[1493] Q You purchased this entire mine field, did you not, from Pittsburgh & Midway?

A We simply leased it. We assumed control of it,

what they had, and added to it as we saw fit and were able to.

Q And Allendale was a profitable operation, was it not?

A Yes. It had a rather limited life, and that was the reason that P & M turned it over to us. They claimed the reserves were seventeen million. We figured it a little more conservatively and came up with twelve million, which wouldn't support new equipment.

The reason we got together was that our Little John Mine was fading out. They heard of this. I think a year and a half to two years before Little John closed, they got in touch with us and said, "We have reserves that we don't think we can operate a mine on, put a mine on. You have a mine that is going out and some equipment nearby." They are only about 30 miles away.

Also their problem was that they had made—their leases were 20 year leases basically, and ten years had run on them. So there is only ten years to go.

We took that risk of renegotiating these leases, and, of course, in part of the ten years we would have mined them out.

[1494] But if we had to start in with a whole new plant, new shovel, new trucks, new tractor, new loading shovel, new preparation plant, we wouldn't have done it, and they wouldn't either. We brought in all our pit equipment. The only thing new we put in was the preparation plant.

Q Is it true Stonefort examined the property where the Banner mine was located in the early 1950's?

A We examined, as I recall, a portion of it that was controlled then by a fellow by the name of Cook. I had some discussions with him on it. We didn't examine it too much. I recall that back in the 30's, the late 30's, I guess, looking in the records and talking with my father, that it was worked on at that time and nothing came of it.

Q Is it fair to state, sir, that Stonefort had an opportunity to acquire the Banner property?

A I don't think we got far enough down the road with Mr. Cook to say we had a real opportunity. I believe he was running non-union. There were some prob-

lems with that property. They were rather limited reserves, very thin coal and along the Illinois River you are working behind a levee, a low drainage level. There is the risk of having a major seepage or, if something happened to that levee, bringing the whole Illinois River into your [1495] pit. That is a pretty troublesome risk.

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REDIRECT EXAMINATION

BY MR. KEMPF:

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[1503] Q You discussed the moving of the equipment from the Little John to the Allendale Mines during the course of your cross examination. When did this move occur?

A That was in the 1959-60—I can't remember. It was right in there.

Q Approximately a decade ago?

A Yes.

Q My question is would you expect that the figures you estimated concerning the cost of moving that equipment, if indeed the equipment were the same—I think you referred to a 35-yard shovel.

A Yes.

Q Assuming the moving of the same equipment, only of the same equipment, at the present time, would you expect that cost to be lower, higher or about the same?

A It would be much higher obviously, and not only that, but Allendale's was designed for a five or six hundred thousand ton a year operation, and really that is hardly a viable size mine. As things go, you would really have to start with a bigger machine, which would cost a lot more.

Q Was any part of that equipment moved by rail?

A A few of the major pieces. I think the dipper stick and bucket and a few pieces that were too big and [1504] awkward to move—we could have cut them up, but it would have been even worse. So we put them on flat cars, and we moved them. They were too big for the highway basically.

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